SUPREME COURT OF THE UNITED STATES.

No. 418.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, APPELLANT,

vs.

SELAH CHAMBERLAIN,

AND

No. 419.

THE MILWAUKEE AND ST. PAUL RAILROAD COMPANY, APPELLANT,

vs.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY AND SELAH CHAMBERLAIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print
Bill of complaint	1	1
Exhibit No. 1 attached to bill—trust deed to Barnes	26	16
Exhibit No. 2 attached to bill—supplemental mortgage to Barnes	33	23
Exhibit No. 3, Chamberlain lease	49	37
Exhibit No. 3, Chamberlain contract, same date of lease	52	40
Exhibit No. 4, Chamberlain and Alden contract March 29, 1855	55	43
Exhibit No. 5, Chamberlain contract Nov. 20, 1856	62	49
Exhibit No. 6, Chamberlain contract January 20, 1857	64	51
Exhibit No. 7, Chamberlain contract January 20, 1857	67	54
Exhibit No. 8, Chamberlain contract April 30, 1857	68	55
Exhibit No. 9, Chamberlain contract Sept. 26, 1857	68	55
Exhibit No. 10, Chamberlain contract Dec. 12, 1857	71	58
Exhibit No. 11, Chamberlain contract January 1, 1858	73	60
Exhibit No. 12, Cleveland decree	76	62
Subpœna	78	64
Return of subpœna	79	64
Amended bill of complaint	80	65
Exhibit No. 1, Barnes' mortgage	90	75

	Original.	Print.
Exhibit No. 2, Barnes mortgage, supplemental	97	81
Exhibit No. 3, Chamberlain lease	113	96
Exhibit No. 4, Cleveland bill	115	99
Exhibit No. 5, answer of Chamberlain	123	106
Exhibit No. 6, Cleveland decree	133	115
Answer of Chamberlain to amended bill	135	117
Exhibit No. 1 to answer of Chamberlain—letter of Bronson and Soutter	140	119
Exhibit No. 2 to answer of Chamberlain—letter of Chamberlain	140	120
Answer of Milwaukee & St. Paul Railway Company	142	122
Cross bill of Milwaukee & St. Paul Railway Company	150	127
Exhibit No. 1 to cross bill—Chamberlain lease	158	132
Exhibit No. 2 to cross bill—Bronson and Soutter letter	160	136
Exhibit No. 3 to cross bill—Chamberlain letter	160	136
Exhibit No. 4 to cross bill—assignment of lease to St. Paul company	161	137
Subpœna on cross bill	163	138
Return to subpœna on cross bill	164	138
Motion to vacate order allowing St. Paul company to intervene	164	139
Demurrer to cross bill	165	140
Cause submitted	167	141
Answer to cross bill	167	141
Replication to answer of St. Paul company	168	142
Decree	170	143
Order allowing appeal of Milwaukee & Minnesota Railroad Company	171	144
Bond on appeal of Milwaukee & Minnesota Railroad Company	172	145
Petition of Milwaukee & St. Paul Railway Company for appeal	173	146
Order allowing appeal	174	146
Bond on appeal	175	147
TESTIMONY OF MILWAUKEE AND MINNESOTA RAILROAD COMPANY.		
Deposition of Hugh Lee	176	148
Exhibit No. 1 attached to said deposition	214	172
Book A of diagrams referred to in said deposition	216–299	173
Book B of diagrams referred to in said deposition	300–319	173
Deposition of Selah Chamberlain	320	174
Exhibit attached to said deposition	326	178
Contract referred to in said deposition, Nov. 20, 1856, see page	62	49
Contract referred to in said deposition, Jan'y 20, 1857, see page	64	51
Contract referred to in said deposition, April 30, 1857, see page	68	55
Chamberlain and Alden contract, see page	55	43
Chamberlain contract same date of lease, see page	68	56
Stipulation of certain facts	337	184
Articles of organization of Milwaukee & Minnesota Railroad Company	341	187
Contract between Bronson and Soutter by P. Dow and Chamberlain	351	194
Proceedings in foreclosure Barnes mortgage	356–402	198
Stipulation	404	235
Cleveland record	405–651	470
Stipulation	652	470
Record in the case Milwaukee & Minnesota Railroad Company vs. Chamberlain	653–713	514
DEFENDANT'S EVIDENCE.		
Deposition of George H. Daniels	714	514
Deposition of Daniel L. Wells	717	517

	Original.	Print.
Deposition of A. S. Van Meenen	719	518
Deposition of Foster C. Dodge	724	520
Deposition of William R. Sill	728	523
Deposition of Robert Campbell	743	532
Copy of assignment of Chamberlain lease	758	541
Copy of assignment of Chamberlain judgment	760	542
Stipulation in relation to testimony of Chamberlain et al	761	543
Exhibit No. 10 referred to by Chamberlain	790	562
Deposition of H. L. Palmer	811	582
Deposition of Daniel L. Wells	815	585
Stipulation extending time for clerk to make record	819	588

1 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law, on the second Monday of April, A. D. 1866, at the city of Milwaukee, in said district of Wisconsin, present and presiding Hon. Sam'l F. Miller, circuit judge, and the Hon. Andrew G. Miller, district judge.

On the seventh day of the term, to wit, on the sixteenth day of April, A. D. 1866, the following proceedings were had, to wit:

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.
} In equity.

Be it remembered that heretofore, to wit, on the nineteenth day of May, A. D. 1864, the above-named complainant, by Matt. H. Carpenter, its solicitor, filed in the office of the clerk of the circuit court of the United States for the district of Wisconsin its bill of complaint against the above-named defendant, in the words and figures following, to wit:

To the judges of the circuit court of the United States for the ninth circuit and district of Wisconsin, in equity:

The Milwaukee and Minnesota Railroad Company, a corporation organized and existing under and according to the laws of the State of Wisconsin, brings this its bill of complaint against Selah Chamberlain, of Cleveland, Ohio, and a citizen of the State of Ohio, and thereupon your orator complains and says:

That from and after the 1st day of January, A. D. 1853, until the 21st day of May, A. D. 1862, there was and existed under and by the laws of the State of Wisconsin a corporation called the La Crosse and Milwaukee Railroad Company, and that its business and affairs were managed by a board of directors. That about the 21st day of June, A. D. 1858, the said company was indebted to a large
2 amount of floating debt accumulated for rolling stock and materials furnished and provided, and labor performed for said company, which was unsecured upon the railroad or other property of said company; and that a large number of the farmers along the line of said company's railroad had before then loaned their credit in form of bonds and mortgages to aid said company in the construction and equipment of its said railroad, which bonds and mortgages had been before then used by the said company, with a stipulation on its part with and to said farmers to pay the interest that might accrue thereon, and that a large sum of said interest which said company was bound to pay as aforesaid had become due and the said company was unable to pay the same, and proceedings were threatened against

such farmers to enforce payment of such interest; and that the said company, for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute, and perfect, ready to be negotiated, solely, delivered and transferred in payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and payable in A. D. 1888, with interest at seven per cent., payable semi-annually on the first day of January and July in each year, with coupons for said interest to said bonds respectively attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did, on the said 21st day of June, A. D. 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust in due form of law, and as it by law had authority to do, to William Barnes, to secure the payment of said last-named bonds and the interest thereon, in and by which said mortgage or deed of trust said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "all and singular the railroad of said company, commencing in the city of Mil-

3 waukee and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces, or parcels of land which then were or thereafter might be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted, or might thereafter constitute or be a part of or appertain to said railroad, whether then made or to be made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on, or appertaining to said railroad, whether then made or built or to be built and made thereafter; and also all and singular the locomotive engines, and other rolling stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been or might thereafter be procured for or used in connection with such railroad. And also all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse, together with other property and things in said mortgage described; and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, trustee, and was by said trustee thereafter caused to be duly and legally recorded in the office of the secretary of state of the State of Wisconsin, and in the offices the registrars of deeds in the several counties through which said railroad passes and was then located. That on the 11th day of August, 1858, the said company made, signed, sealed, and delivered to

said Barnes, trustee, a certain indenture of supplementary mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust hereinbefore set forth, and dated June 21st, 1858, and did convey to said Barnes as trustee as aforesaid in addition to the things in said first mortgage conveyed the following, that is to say, "All and singular the rights, privileges, liberties, and franchises of said company, of every kind and description, and also all the lands granted or intended to be granted to said company under and by virtue of the act of Congress and the
4 act of the legislature of the State of Wisconsin, in said supplementary mortgage mentioned, and also all the hereditaments and appurtenances belonging, or in anywise appertaining, to the lands and real estate therein conveyed, or intended to be conveyed; and also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action, of whatsoever nature, which might be owned, or in which said company might have an interest, on such day as such company might first make default in the payment of the interest or principal, or any part thereof, which thereafter become due on any of the said bonds issued, or to be issued by said company, and to secure which said mortgage was given. That immediately thereafter the said Barnes caused said supplementary mortgage to be recorded as and in the same offices as the first named deed of trust or mortgage to said Barnes was recorded as hereinbefore set forth, a copy of which said first mortgage or deed of trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes are attached hereto, and marked, respectively, Exhibit No. 1 and Exhibit No. 2.

And your orators further show unto your honor that immediately thereafter said company commenced to deliver the said last-named bonds, so secured as aforesaid, in payment of the indebtedness of said company, and for the other purposes contemplated by said company in the issue thereof, and in the necessary and proper business of said company; and that all of said bonds were sold and delivered in payment and transferred by said company, for the purposes and in the manner contemplated as aforesaid by said company, and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin, in payment of the indebtedness of such persons against said company for materials furnished to, and services rendered for, said company, and that large numbers of said bonds are now held by such persons in the said State, or have been turned by them into the stock of the Milwaukee and Minnesota Railroad Company, as hereinafter stated. And that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York, which are now held by bona
5 fide purchasers and owners, or have been by them turned into the stock of the Milwaukee and Minnesota Railroad Company, as hereinafter mentioned.

That about the 1st of February, A. D. 1859, the said company having made default in the payment of or part of the interest due

on said bonds secured as aforesaid, the said William Barnes, in pursuance of the provisions of the laws of said State of Wisconsin, then in force in that behalf, and the provisions contained in said mortgages or deeds of trust, proceeded to the foreclosure of said mortgages by advertisement, and having previously given the notice required by law in that behalf, on the 21st of May, A. D. 1859, said William Barnes, trustee, sold at public auction at the court-house, in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage, and supplementary mortgage to him, said Barnes, described; and the said William Barnes, trustee, then and there, at said sale, became the purchaser thereof, according to the provisions of the laws of the State of Wisconsin, then in force in that behalf, at and for the sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, ($1,593,333 33,) no other person or body having made any bid whatever for the same; and that said mortgages thus became, and were thereby foreclosed, according to the provisions of the laws of the State of Wisconsin in that behalf then in force.

And that said Barnes, by virtue of said purchase, and the provisions of the laws of the State of Wisconsin then in force in that behalf, became the owner of the property and franchises, and other things so purchased by him, and thereafter held the same, in trust, and only in trust, for the holders of the then outstanding bonds secured by said mortgages.

And that afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the said bonds proceeded to organize anew, and then and there elected directors and took the corporate name "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last-named company all the property and things by him purchased as aforesaid; and thereafter said company proceeded and con-
6 ducted their business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company; and thereby became, and ever since have continued, a corporation under and by virtue of the laws of said State, capable of suing and being sued; and that said Milwaukee and Minnesota Railroad Company, immediately thereafter, entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company, so far as the same were in possession of said La Crosse and Milwaukee Railroad Company at the time of said sale.

And your orators further show unto your honor that said bondholders, at said new organization, elected and chose the following named persons directors of said Milwaukee and Minnesota Railroad Company, viz: Russell Sage, N. I. Emmons, Hans Crocker, Wm. E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William R. Sill, and ——— Battershall; and that said directors, immediately thereafter, organized the said board of directors by electing and choosing Russell Sage president, N. I. Emmons vice president, and

Dwight W. Keyes secretary, of said Milwaukee and Minnesota Railroad Company.

And your orators further show unto your honor that by virtue of the said foreclosure of said deeds of trust or mortgages to said Barnes, as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company and conveyance by said Barnes as hereinbefore set forth, that the said Milwaukee and Minnesota Railroad Company became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company, as to all the property and things described in said deeds; and the owner of, and clothed with all the rights, privileges, franchises, and property, real and personal, and things in action, and effects of every nature and description, before then belonging to said La Crosse and Milwaukee Railroad Company, wherever situated and however circumstanced, subject only to such valid and legal liens and encumbrances thereon, as were prior to said first deed to said Barnes; and that the said Milwaukee and Minnesota Railroad Company, being by law an incorporated company, composed of the creditors of the said La Crosse and Milwaukee Railroad Company, and purchasers at said foreclosure sale, (in the manner hereinbefore stated,) as corpo-
7 rators, has a legal right to object, to resist and set aside any and all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments, which were, or have been made or suffered by said La Crosse and Milwaukee Railroad Company, with intent to hinder, delay, or defraud its creditors, and has the right to object to, resist, and set aside every illegal, unjust, or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company, which is apparently a lien or encumbrance upon any of the property, rights, privileges, franchises, or other things whatsoever of said last-named company, which were embraced or described, or intended to be embraced or described, in either of said trust deeds to said Barnes, and now owned by said Milwaukee and Minnesota Railroad Company, as hereinbefore stated.

8 Your orators further show that the said La Crosse and Milwaukee Railroad Company, heretofore, to wit, on and before the 26th day of September, A. D. 1857, were greatly embarrassed and in failing circumstances; that some of the creditors of said company had before that time commenced suits against said company, and others of its creditors were threatening to do so, and the said company was unable to pay its debts and prosecute the completion of its said railroad, which was then only completed and in operation from the city of Milwaukee to or near New Lisbon, in said district; and that the said company then and there designing and intending to hinder, delay, and defraud its creditors, and to hold its creditors at defiance and apply its revenue and means to the completion of its said road, did pretend to make and in form did make, execute, and and deliver to said Selah Chamberlain a pretended deed or lease, which is hereto attached and marked Exhibit No. 3, and hereby made a part of this bill.

And your orators further show that after the making and delivery

of said last-named deed or lease to the said Chamberlain as aforesaid, to wit, on the day and year last aforesaid, the said Chamberlain entered into possession of all the property, franchises, and other things mentioned and described in said deed or lease.

Your orators further show that the said La Crosse and Milwaukee Railroad Company had no legal right or competent authority to make or deliver said deed or lease; that the making and delivery thereof were acts beyond the corporate powers of said company, and were therefore of none effect and void; and that the same were and are
9 void as to all creditors of said company and as to your orators for the further reason that the said deed or lease was made, executed, and delivered by said company with the intent and design on the part of said company, and on the part of its board of directors, to thereby hinder, delay, and defraud its creditors, and particularly Vose, Livingston & Co., creditors of said company, and with intent to hinder and delay said Vose, Livingston & Co. from asserting their just claim and demand in regard to certain railroad iron of great value, to wit, the sum of one hundred thousand dollars and upwards, which intentions and designs of said company were well known to said Chamberlain when said deed or lease was delivered to and accepted by him, which your orators charge the facts to be, and that said Chamberlain accepted said deed or lease and entered into possession as aforesaid for the purpose of aiding and abetting said company in its said unlawful and fraudulent intents and designs aforesaid.

And your orators further show that afterwards, to wit, on the 2d day of October, A. D. 1857, the said La Crosse and Milwaukee Railroad Company and the said Chamberlain, fearing and being advised by the counsel of said Chamberlain that there was some doubt as to whether the said fraudulent purposes, designs, and intentions of the said company and the said Chamberlain could be accomplished under and by said deed or lease, and that there was some doubt whether said deed or lease would prevent said Vose, Livingston & Co. from enforcing their just demand and claim aforesaid, did on that day further combine and confederate together to hinder delay and defraud the creditors of the said company and to hinder, delay, and defraud said Vose, Livingston & Co., and prevent them from asserting their claims and enforcing their rights in regard to said railroad iron; and did then and there agree that said company should, and said company then and there did, to wit, at Milwaukee, in the said district, on said 2d day of October, 1857, confess and suffer a judgment against it and in favor of said Chamberlain in the district court of the United States for the district of Wisconsin, without service of process or suit brought, for the sum of six hundred twenty-nine thousand and eighty-nine dollars and seventy-two cents damages, and fifteen dollars and
10 fifty cents costs, which said last-named judgment was in form duly confessed, entered, and docketed in said court; but that said company, when it confessed and suffered said judgment to pass as aforesaid, was not indebted to the said Chamberlain to the amount for which said judgment was rendered, and did not owe, and was

not indebted to said Chamberlain in any amount, though what was the precise state of accounts between said company and said Chamberlain your orators are not informed and cannot state, but are informed and believe, and thereupon state, that no consideration or value was ever received by or ever accrued to said company on account of said judgment, and that there was no consideration whatever for said judgment, and that said judgment was only confessed by said company in pursuance of said unlawful combination and confederacy between said company and said Chamberlain, and for the purpose of bolstering up said fraudulent deed or lease, and for the purpose and with the intent and design on the part of said company and its board of directors and said Chamberlain, to thereby hinder, delay, and defraud the creditors of said company, and particularly Vose, Livingston & Co.

Your orators further show that the said deed or lease, in its operation and legal effect, operated until set aside, as hereinafter stated, to greatly embarrass and unreasonably to hinder, delay, and defraud the creditors of said company in the enforcement of their just claims and demands against said company, and created trusts for the benefit of said company to an unlimited amount, and enable said company, through said Chamberlain as its pretended lessee, to carry on and prosecute its business for its own benefit and in defiance of its creditors, and enabled said company to enjoy and receive benefits and advantages from its said property, while its creditors were thereby unreasonably hindered, delayed, and prevented from enforcing collection of their just debts against said company out of said property and things conveyed in said lease, and the rents, revenues, income, and tolls arising therefrom, and the use and operation thereof; and that for these reasons the said deed or lease to said Chamberlain
11 and said judgment confessed in aid of, and to bolster up said lease, are void in law, without regard to the intentions and designs with which in fact said lease was given and judgment confessed as hereinbefore stated. And your orators further show that the said Chamberlain falsely and fraudulently pretends that said company was at the time when said deed or lease was made, executed, and delivered, and said judgment confessed as aforesaid, indebted to him, said Chamberlain, in the amount for which said judgment was confessed on account of and for certain work done and labor performed and materials furnished before that time by said Chamberlain for said company in completing its said road; but your orators are informed and believe that upon a fair, just, and equitable accounting and settlement between said Chamberlain and said company in that behalf, the said company would not have been found at that time and was not indebted to said Chamberlain.

Your orators further show that on the 29th day of March, A. D. 1856, the said Chamberlain and one S. H. Alden made a certain contract with said company, a copy of which is hereto attached and marked Exhibit No. 4, and hereby made a part of this cross bill; that said Chamberlain and said Alden pretended to perform said contract, and claimed to and did receive from said company compensation in full as for a full performance of said contract.

Your orators further show that by said last-named contract the said Chamberlain and the said Alden agreed to construct the road bed for said road, to be graded fourteen feet wide in embankments at sub-grade and eighteen feet wide in cuts, and that they received full compensation from said company for so constructing said road bed at the prices stipulated in said contract; whereas your orators aver and charge the fact to be that said road bed, as constructed by said Chamberlain and said Alden was only graded about nine feet wide on embankments and in cuts at sub-grade, and that in consequence of said road bed being so graded the said Chamberlain and the said Alden each had and received from the said company, as pretended compensation for work never performed by them or either of them, more than fifty thousand dollars, which said sum of fifty thousand dollars, so wrongfully received by said Chamberlain, was then and still is equitably due and owing from said Chamberlain to said com-
12 pany, and ought to be accounted for by said Chamberlain with said company.

And your orator further shows that on the 20th day of November, 1856, the said Chamberlain and the said company made and entered into a certain other contract for the ballasting the said company's said railroad from Beaver Dam to the city of Portage, a copy of which contract is hereto attached and marked Exhibit No. 5, and hereby made a part of this bill; that the price in said contract agreed to be daid to said Chamberlain for said work was at the rate of forty cents per cubic yard, but that both said company and said Chamberlain, when said last-named contract was made, well knew that sixteen cts. per cubic yard would have been a full reasonable compensation for doing said work in the manner stipulated for in said contract. And your orators further show that said Chamberlain fraudulently pretends that the amount of ballasting by him done under said contract is one hundred and ninety-two thousand five hundred and forty-two cubic yards, (192,542,) whereas your orator charges and states the facts to be that the whole amount of ballasting by said Chamberlain done under said contract is only seventy-six thousand six hundred and five cubic yards, (76,605,) and that the same could have been procured by said company to be done in the manner stipulated for in said contract for the sum of sixteen cents per cubic yard, and that that sum would have been a reasonable compensation therefor.

Your orator further shows that on the 20th day of January, A. D. 1857, a certain other contract was made and entered into between said company and said Chamberlain, a copy of which is hereto attached and marked Exhibit No. 6, and hereby made a part of this bill, and that afterwards on the same day the said company and the said Chamberlain made and entered into another contract in writing, a copy of which is hereto annexed and marked Exhibit No. 7, and hereby made a part of this bill.

Your orator further shows that afterwards, on or about the 30th day of April, A. D. 1857, said Chamberlain and one Edwin H. Goodrich pretended to make and enter into a certain contract be-
13 tween the said company and the said Chamberlain and reduced

to writing and signed the same upon the back of said contract, a copy of which is Exhibit No. 6 to this bill, a copy of which said agreement as reduced to writing and signed by said Goodrich and said Chamberlain is hereto attached and marked Exhibit No. 8, and hereby is made a part of this cross bill; but your orators are informed and believe, and therefore show, that said contract was never authorized by said company, and that the said Goodrich had no authority whatever from said company to make and enter into said agreement on its behalf, and that the prices in said last-mentioned pretended agreement agreed to be paid to said Chamberlain were more than five times reasonable compensation for doing said work, and so the said Chamberlain and the said Goodrich well knew when they so pretended to make and enter into the same.

Your orators further show that all the prices in said three agreements last mentioned, agreed to be paid to said Chamberlain, were very much greater than the doing of the work therein mentioned was reasonably worth; and that said contracts were fraudulently made and entered into by and between said Chamberlain and the officers of said company, who, when the same were respectively made well knew that responsible parties would do said work for about one-half of the prices agreed in said contracts to be paid to said Chamberlain therefor; and your orators are advised, and therefore insist and show, that although an agreement entered into by an individual with intent to defraud his creditors is void in law only as to creditors, and valid as to said individual making the same, that the same rule does not apply to a contract made on behalf of a corporation by its officers, who are acting only as trustees and agents for its stockholders, and that such corporation may set aside a contract made and entered into by and between its officers on its behalf with a third person with intent to hinder, delay, and defraud its creditors, or to defraud said corporation and its stockholders; and your orators show that each and every of the three last-mentioned agreements were fraudulently made and entered into by and between said Chamberlain and the officers of said company with the intent to thereby injure and defraud said company; and with the intent to thereby hinder, delay,
and defraud the creditors of said company, and enable the
14 said Chamberlain to make and pretend that said company was indebted to him in fabulous amounts, and thereby acquire the possession and control of said company's said railroad, in fraud of the rights of the stockholders and creditors of said company; and that the prices fixed and named in said respective contracts were fraudulently fixed and named for the purpose of accomplishing said fraudulent designs, and that said contracts are therefore void as against the stockholders and creditors of said corporation; and the said Chamberlain is in equity only entitled, as against the stockholders and creditors of said company, to have and receive a reasonable compensation for the work and labor done and performed, and materials furnished by him under said several three last-mentioned agreements.

And your orators further show that at the time said judgment was

confessed from said company to said Chamberlain, as hereinbefore stated, it was falsely and fraudulently pretended and agreed by and between said Chamberlain and said company that the amount included in said judgment was then justly due from said company to him, said Chamberlain, for work and labor done and performed and materials furnished by him, said Chamberlain, to and for said company, under and in pursuance of said three contracts, copies of which are exhibits numbered respectively 6, 7, and 8 to this bill; and that it was then and there falsely and fraudulently agreed as aforesaid that the said Chamberlain should have allowed and included in said judgment, among others, the following items, that is to say:

Grubbing and clearing 80 miles, at three hundred dollars per mile	$24,000 00
Solid rock excavation, 118,250 cubic yards, at one dollar per cubic yard	118,250 00
Loose rock excavation, 2,400 cubic yards, at seventy-five cents per cubic yard	1,800 00
Roadway and cattle passes	11,700 00
Bank wall, 3,500 cubic yards, at three dollars	10,500 00
Tunnel approach excavation, 64,000 cubic yards, at two dollars per cubic yard	128,000 00
15 Ballasting 45¼ miles, at two thousand dollars per mile	90,500 00
Ballasting from Beaver Dam to Portage, 192,542 cubic yards, at forty cents per cubic yard	77,016 80
Filling in bank at Beaver Dam pond	20,768 6

Which items it was then and there pretended were proper charges by said Chamberlain, against said company, for work done and materials furnished under said three contracts, at the prices fixed in said contracts respectively; whereas your orators aver the fact to be and show that not only were said prices exhorbitant and unreasonable as hereinbefore stated, but that the said pretended quantities represented in said items were false, the said Chamberlain not having done under said contracts the amount of work embraced in said items; and your orator further show that the said Chamberlain had done of the work embraced in said items no more than is stated hereinafter, viz:

Grubbing and clearing	29	miles.
Loose rock	53,377	cubic yards.
Solid rock	22,668	cubic yards.
Roadway and cattle passes, worth	3,260	dollars.
Retaining, or bank wall	406⅔	cubic yards.
Tunnel approaches	22,644	cubic yards.
Ballasting, from Beaver Dam to Portage	76,605	cubic yards.

And your orator shows that said item, "ballasting 45¼ miles, at $2,000 per mile, 90,500 dollars," was entirely false and fraudulent, that the said Chamberlain had done no work which could be called or considered ballasting. And your orators further show that the item "filling in bank at Beaver Dam pond, 20,768,65-100 dollars,"

was also false and fraudulent, that the whole amount of work done at said Beaver Dam pond did not exceed twenty-seven thousand two hundred and sixty-six cubic yards, and that twenty cents per cubic yard, or fifty-four hundred and fifty-three dollars would have been a reasonable compensation therefor.

Your orator further shows that the road bed as in fact constructed by said Chamberlain under said three contracts last mentioned
16 was not constructed according to the terms and provisions of said contracts, but was constructed on an average five feet narrower than was agreed upon in said contracts, but that the said Chamberlain was permitted to and did include in said judgment the same compensation per mile for making said road bed as though the same had been constructed according to the provisions of said contract, whereby a difference was made fraudulently against said company of over two hundred thousand dollars.

Your orator further shows that at the time said deed or lease was given and said judgment was confessed to said Chamberlain as hereinbefore stated, the said company and the said Chamberlain mutually consented and agreed to abandon the said three last-mentioned contracts and to discontinue further prosecution of the work agreed in said contracts to be performed as hereinafter stated, and the said company then and there intending to hinder, delay, and defraud its creditors, gave and delivered to said Chamberlain its second mortgage bonds, so called, to the amount of and of the value of two hundred thousand dollars, as pretended compensation for damages which it was pretended said Chamberlain then and there suffered by the suspension of said work and the abandonment of said contracts; and your orators claim and insist that the said Chamberlain should be ordered and decreed by the court to allow a credit to the par value thereof against the amount, if any, which may be ascertained to have been justly due from said company to said Chamberlain at the time said judgment was confessed and docketed as aforesaid.

And your orators further show that at the time said deed or lease was given, as hereinbefore stated, said company and said Chamberlain, in further prosecuting of the said unlawful and fraudulent designs, with which said lease was given as hereinbefore stated, entered into a certain other contract, a copy of which is hereto attached and marked Exhibit No. 9, and hereby made a part of this bill; and said Chamberlain thereafter entered into possession of said property and things in said lease conveyed, and performed part of the
17 work stipulated for in said last-named contract; but your orators show, that no part of the price or compensation agreed to be paid to said Chamberlain for work done under said-last named contract was ever reduced to judgment, or in any way made a lien upon the property, road, rights, and franchises of said company.

Your orators further show that on the 12th day of December, 1857, said company and said Chamberlain entered into another contract, a copy of which is hereto attached and marked Exhibit No. 10, and hereby made a part of this bill; and that afterwards, on the 1st day of January, 1858, the said company and said Chamberlain, made and

entered into a certain other contract, a copy of which is hereto attached and marked Exhibit No. 11, and hereby made a part of this bill.

And your orator shows that said Chamberlain afterwards did and performed part of the work specified in said last two contracts, but that no part of the prices or compensation agreed to be paid to said Chamberlain therefor was ever reduced to judgment or ever became a lien upon any of the property, rights, franchises, or other things of said company; but that as to all the work and labor done and performed, and materials furnished by said Chamberlain, for and to said company, subsequent to the confession of said judgment to said Chamberlain, as hereinbefore stated, the said Chamberlain has been paid, or remains and is merely a creditor at large of said company, and has no lien whatever upon any property, rights, franchises, or other things of said company therefor, or to secure the payment thereof.

Your orator further shows that said road bed as constructed by said Chamberlain under said several contracts hereinbefore set forth, from Beaver Dam to La Crosse, is on an average five feet narrower than required by said contracts, and that upon a just and equitable adjustment and settlement between said company and said Chamberlain, said company ought to be allowed a deduction of more than two hundred thousand dollars on account of said deficiency in the width of said road bed.

Your orator further shows that in constructing the work provided for under said contracts, copies of which are Exhibits Nos. 10 and 11, the said Chamberlain used and employed the locomotives and cars of said company, for which use the said company is equi-
18 tably entitled to a credit of more than one hundred thousand dollars, to offset the amount said Chamberlain is entitled to have for doing said work.

Your orator further shows that the prices fixed in said contracts, copies of which are Exhibits Nos. 10 and 11, hereto attached, are more than twice as high as said work could have been procured to be done for; and were so fixed for the same fraudulent purpose, and with the same fraudulent intent that is hereinbefore stated to have existed as to the making of said three contracts, copies of which are hereto attached, marked Exhibits Nos. 6, 7, and 8, and your orator therefore claims and insists that said contracts are void, and that the said Chamberlain, as against other creditors of said company, is only entitled to have and receive, for doing the work specified in said contracts, such sum as will be a reasonable compensation therefor, without regard to the prices stipulated for said work in said contracts.

Your orators further show, that immediately after the date of said deed or lease to said Chamberlain hereinbefore mentioned, said Chamberlain entered into possession of the railroad rights, privileges, franchises, property, and other things in and by said deed or lease described, and continued in the possession of and operating the same until the 1st day of December, 1859, being a term of two years and two months. That while said Chamberlain was thus in possession of

said road, property, and other things, he received as rents and tolls therefrom the following sum, that is to say, twelve hundred and four thousand dollars, ($1,204,000,) which said Chamberlain ought to account for to and with the Milwaukee and Minnesota Railroad Company, as hereinbefore stated.

Your orators further show that on a full and just accounting between said Chamberlain and said La Crosse and Milwaukee Railroad Company, or between said Chamberlain and the Milwaukee and Minnesota Railroad Company, of and concerning all work done by said Chamberlain under said several contracts hereinbefore set forth, (and which contracts cover and specify all the work ever done, and materials found by said Chamberlain for said company,) and of and concerning all rents, revenues, tolls, income, money, bonds, and
19 other things received by said Chamberlain from and belonging to said company, and stating an account in favor of said Chamberlain, charging for all the work done and performed, and materials furnished by him at its fair and reasonable worth and value, the said Chamberlain will be found to be largely indebted to said company.

And that upon an accounting had as aforesaid, even at the prices fixed in said contracts, for the amount of work actually done and performed, and materials furnished said company, will not be found indebted to said Chamberlain or in any sum whatever at the time said lease was given and said judgment was confessed.

Your orator further shows that while said Chamberlain was in possession of said road and other things, under said deed or lease, and after the confessing and docketing of said judgment in his favor, to wit, on the 3d day of October, A. D. 1857, one Newcomb Cleveland recovered judgment against said La Crosse and Milwaukee Railroad Company, in said district court of the United States for the district of Wisconsin, for the sum of one hundred and eleven thousand seven hundred dollars and seventy-one cents damages and costs, and that afterwards said Cleveland caused a writ of fieri facias to be issued on said judgment, and delivered to the marshal of said district in due form of law, who afterwards made return thereto that he could find no property whereon to levy said execution. That afterwards, on the 31st day of October, A. D. 1857, said Cleveland exhibited, on the equity side of said district court, his bill of complaint against said La Crosse and Milwaukee Railroad Company and Selah Chamberlain and others, defendants; that said Cleveland in his said bill of complaint showed and charged that said judgment in his favor was wholly unsatisfied; that writ of fieri facias had been issued and duly returned unsatisfied thereon; that said company had no property whereon to levy said execution at law, and prayed the aid of said district court in equity to enforce the collection of his said judgment against the equitable interests and property of said company, and also showed to said court that the said deed or lease and said judgment given and confessed to said Chamberlain hereinbefore mentioned were made and confessed with intent to thereby hinder, delay, and defraud the creditors of said company, and prayed the

said court that the said deed or lease and said judgment to said Chamberlain might be by said court declared to be null and void as to said Cleveland, a creditor of said company; that upon said bill subpœna was duly issued and personally served upon both said La Crosse and Milwaukee Railroad Company and said Selah Chamberlain, and that both said Chamberlain and said last-named company appeared in said suit in equity, in favor of said Cleveland, and put in their answers thereto according to the practice of said court, and that said Cleveland took issue upon said answer of said company and said Chamberlain, by filing replications thereto, and that thereupon in that suit testimony was taken in said suits as to the intent with which said deed or lease was given and said judgment confessed to said Chamberlain, and as to the amount really due from said company to said Chamberlain at the time said lease was given and said judgment confessed, and that after a full hearing on the merits in said suit, and upon the precise issue raised therein as to the validity of said lease and judgment to said Chamberlain, between said Cleveland and said company and said Chamberlain, the said district court in equity afterwards made a final decree, a copy of which is hereto attached, marked Exhibit No. 12, will more fully appear, and which said Exhibit No. 12 is hereby made a part of this bill.

Your orator further shows that the said mortgages or trust deeds from said company to said William Barnes were made, executed, and delivered to said Barnes, which said suit in favor of said Cleveland in said district court in equity was pending, so that your orator is not only in privity with said La Crosse and Milwaukee Railroad Company as to the railroad and rolling stock aforesaid, but your orator is also a purchaser pendente lite, and bound by and entitled to the benefit of said decree to the same extent as the said La Crosse and Milwaukee Railroad Company was bound and entitled thereby.

21 Your orator further shows that it is advised and therefore insists and shows to the court that the said decree of the said district court in equity having been made and rendered in a certain suit, in which both said Chamberlain and said La Crosse and Milwaukee Railroad Company were parties, is conclusive upon the same question in any subsequent litigation between said Chamberlain and said last-named company, and therefore is conclusive in any litigation between said Chamberlain and said Milwaukee and Minnesota Railroad Company, which is the successor of the said La Crosse and Milwaukee Railroad Company, and the owner of its property, rights,

22 privileges, franchises, and other things as hereinbefore stated.

And therefore your orators claim that the said decree in said district court, a copy of which is Exhibit No. 12 hereto, is conclusive in favor of your orator by way of estoppel against said Chamberlain, and your orator will rely upon the record, proceedings, and decree in said suit in equity in favor of said Cleveland as conclusive as aforesaid; that the said Chamberlain now pretends that said lease and judgment are valid liens and claims upon said railroad, rolling stock, and franchises prior to the right and title of your orator thereto, and

the same enable the said Chamberlain to pretend to a lien and encumbrance upon said road and other property and franchises.

23 To the end therefore that the said Selah Chamberlain may, if he can, show why your orator should not have the relief hereby prayed for, and may, upon his several and corporal oath, according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct, and perfect answer, make to all the matters, charges, and things herinbefore set forth, and that the said deed or lease to said Chamberlain, and the said judgment confessed to said Chamberlain, as hereinbefore set forth, may be adjudged and decreed to be absolutely null and void as to your orators, creditors of the said La Crosse and Milwaukee Railroad Company; and that all the said several contracts and agreements hereinbefore set forth, and copies of which are hereto attached as exhibits, and each and every one of them may be adjudged null and void, as fixing the price and compensation said Chamberlain is entitled to have or demand for doing the work therein specified; and that it may be adjudged and decreed that the said Chamberlain is only entitled in this suit to compensation for work actually done and materials actually furnished by him for and to said La Crosse and Milwaukee Railroad Company at such rate as is reasonable compensation therefor, irrespective of the prices fixed in said contracts, or either of them, therefor; and that an account may be

24 stated between said Chamberlain and said La Crosse and Milwaukee Railroad Company, in which said Chamberlain shall be charged with all the money and other things of value received by him at any time from said company, together with interest thereon, and with all sums of money received by him while in possession, under said deed or lease as hereinbefore stated, with interest thereon; and that he be credited with the true amounts of work done and materials furnished by him for said company at the fair cash value and reasonable compensation therefor; and that said Chamberlain shall be adjudged and decreed to pay to your orators any balance that on such accounting may be found against him; and that in case the balance on said accounting shall be in favor of said Chamberlain, that then he may be adjudged to be a creditor at large of the La Crosse and Milwaukee Railroad Company, but without a lien therefor upon any of the property of said La Crosse and Milwaukee Railroad Company, or of the Milwaukee and Minnesota Railroad Company. Or if the said court shall adjudge and decree that said judgment confessed to said Chamberlain shall stand as an equitable lien for the amount then actually due, him that then an account shall be stated in the manner and upon the principles aforesaid up to the time of the confession of said judgment, and that only the balance so ascertained, if in favor of said Chamberlain, shall be decreed to be a lien; and that either party be permitted in the said accounting to introduce evidence of the actual state of dealings and accounts between said Chamberlain and said La Crosse and Milwaukee Railroad Company, and that such investigation shall not be precluded or prejudiced by any pretended settlements between said last-named company and said Chamberlain.

And that your orator may have such other different or further relief as the nature of their case may admit, or shall be agreeably to equity and good conscience.

May it please your honor to grant unto your orator the writ of subpœna issuing out of and under the seal of this court, to be directed to said Selah Chamberlain, commanding him by a certain day and under a certain penalty therein to be inserted, to be and appear before the circuit court of the United States for the district of Wisconsin, in equity, at the city of Milwaukee in said district, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orators shall ever pray, &c., &c.

MATT. H. CARPENTER,
Solicitor of Complainant.
MATT. H. CARPENTER,
Of Counsel.

Barnes mortgage.—Exhibit No. 1.—*Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas, the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA.

No. ——. *State of Wisconsin.* $ ——.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof, in the sum of dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July, in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said

company to William Barnes, of the city of Albany, and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in progress of construction, together with the equipments and all other things pertaining, or which may hereafter pertain to the road so conveyed, reference to which deed is hereby had and made for a more full description of its con-
27 tents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

———— ————, *President.*

———— ————, *Secretary.*

Registered and countersigned this , 185 .

———— ————, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are, or hereafter may be, or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute, or be a part of, or appertain to, said railroad. And also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad,

whether now built or made, or to be built or made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils, and other personal property which have been, or may hereafter be, procured for, or used in connection with, said railroad; and also
28 all and singular the rights, liberties, and privileges, and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin, subject, nevertheless, to lines already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company to the amount of about nine hundred and twenty-two thousand dollars; also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars; also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars; also subject to a mortgage of four million dollars upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part, and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed:

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be

made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or
29 agents, to enter into and upon, and take possession of all and singular the railroad, and all the other property, real and personal, hereinbefore conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, and to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

But before any sale shall be made at auction notice of such intended sale shall be published once in each week for three weeks at the least in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin the same shall be given.

And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor that said company will, from time to time during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to the said trustee all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist, or may hereafter arise, or be imposed upon the property hereby conveyed, or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will re-convey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, and expenses and compensation of the trustee, in, about, or for the execution of the trust, and will in all things keep him fully identified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars, with such sum, as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds secured by this deed of trust, at the lowest price he can purchase the same for, first giving ten days public notice in one or more newspapers published in New York, Albany, and Milwaukee respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The Supreme Court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto. *Provided*, such resignation, after reasonable notice to the president or secretary of said rail-

road company, shall be approved by said supreme court. And on the death, removal or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee, and had executed this deed.

Eleventh. Said trustee hereby accepts and covenants and agrees to and with said railroad company, faithfully to execute said trust.

In witness whereof said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse & Milwaukee Railroad Company—

[SEAL.] By N. P. STANTON, *President.*

LOCKWOOD L. DOTY,

Secretary of La Crosse & Milwaukee Railroad Company.

[SEAL.] WILLIAM BARNES, *Trustee.*

Signed, sealed, executed, and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee.

CLARK, B.
J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P.
32 Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above named corporation, and that the seal affixed to the above in-

strument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and your first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto; and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person
33 described in, and who executed, the above instrument in writing as secretary of, and in behalf of, the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Rail-

road company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal.

[SEAL.]

E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

Exhibit No. 2.

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part:

Whereas the Congress of the United States, by an act approved June 3, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers for six sections in width on each side of said roads respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be ap-
34 pointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold, and which pre-emption has attached as aforesaid, together with the sections and parts

of sections designated by odd numbers as aforesaid, and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land, which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid and no other; and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say: that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said road, under the direction of the Post Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law the Postmaster General shall have the power to determine the same.

Approved June 3, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11, 1856, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, 1856," the people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads, with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise, and enjoy the same rights, privileges, functions, franchises, authority, and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built or to be built thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act; and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

36 SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract, in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connection with any and all other railroads, which may cross, come up to, or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such com-

pany or companies, as last above mentioned, but all such companies shall be put upon the same equal terms: *And provided also*, That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connection with the same, shall at any time not be able to agree upon the terms of such connections, then, and in that case, either party may apply to the circuit court of the circuit in which such connection may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connection shall exist, and the said award of terms of connection shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice, in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present and prospective, of this State, in or to any and all the lands granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress, entitled "An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads," approved June 3, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said lands shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further*, That the title to said lands shall vest in the said La
37 Crosse and Milwaukee Railroad Company in the manner following, that is to say: whenever twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed, so as to admit of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company, and so from time to time until said roads are completed, and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit running regular trains of cars on he same; and the governor of the State shall, in his official capacity, and on behalf of the State, and under the great seal thereof, execute

and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this charter be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on, from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall, from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress, hereinbefore mentioned, shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the La Crosse and Milwaukee Railroad Company for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State re-
38 quired to pay in place of taxes upon its road now constructed or which it may hereafter construct, under the present charter, and in condition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road, to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company, and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company and to examine under oath the officers, agents, and employees of said company and other persons, and if any

person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company.

The first payment shall be made on the first day of March next, after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made, and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village or other municipal authority in the State, (except special taxes for the improvement of streets and side walks,) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed held by said company, and necessary for the operation of said railroad, and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the
39 State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited quantities at fair prices, preference being given to actual settlers.

SEC. 8. That said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other watercraft an any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build, and own such vessels, boats, barges, and other water craft as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of all their right, title, claim, or demand of, in, or to any lands, or interest in lands granted to said company by this act, and in any other estate, real, personal, or mixed, of

which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad, which by this act it is authorized to construct, or any part of it, upon or over any route, upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad; it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy, and the latter company shall pay to any such company, whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth, such payment to be made in money, bonds, stock, or lands, or in such other manner as said companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and in case, they cannot agree upon such third person, the governor shall appoint such third person; and the three persons so selected shall constitute a board of commissioners, whose duty it shall be to to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11. This act and all grants herein contained shall cease and be void, unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so appropriate, take, possess, hold, or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two millions of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary pro rata from each of the several subscriptions; and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

41 SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall, from time to time, operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of the last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state;

And whereas the said railroad company for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined, before the date of the indenture hereinafter mentioned, dated June 21, 1858, between said company of the first part, and said Barnes, as trustee, of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached;

And whereas, also, the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in

the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear;

And whereas also the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee
42 Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances;

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises therein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence, by way of Portage city, to the St. Croix river or lake, a distance of about two hundred and sixty eight (268) miles, and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R. Co., by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands and real estate, which now constitute or may hereafter consti-

tute, or be a part of or appertain to, said railroads, and including also all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to built or made hereafter.

43 And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have always been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by those presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter became due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents, to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular

lands granted by the foregoing acts of Congress and the said legislature had already been fully designated, and duly conveyed, and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above-described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal,
44 and mixed now vested or required, or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises above conveyed, or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, estates or corporations lawfully claiming or to claim the same or any part thereof, subject nevertheless to all legal lines already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal and mixed, and choses in action with the hereditaments, and appurtenances, and all and singular the rights, liberties, privileges and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms and conditions herein expressed; and also expressed in the said indenture, made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the railroad company shall be be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of all and singular the railroads and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profit thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privi-

leges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, or interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week, for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin the same shall be given. And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted, and agreed by the said railroad company, that the provision herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions of omissions to act under this indenture, in the same manner as if all the provision thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse and Milwaukee Railroad Company—
[SEAL.] By N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
WILLIAM BARNES, *Trustee.*

Signed, sealed, executed and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president.

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence, as to William Barnes, the said trustee.

JOHN C. WHITE.
ISAAC EDWARDS.

47 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me, personally appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and on behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid freely for the purposess therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instru-

ment. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on the 24th day of August, eighteen hundred and fifty-eight, before me, personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

48 In testimony whereof I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him as one of the parties thereto, and the La Crosse and Milwaukee Rail-

road Company the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify the person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

49 *Exhibit No. 3.*

LEASE.

The La Crosse and Milwaukee Railroad Company to Selah Chamberlain:

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland, and State of Ohio, party of the second part, at the city of Milwaukee, and State of Wisconsin, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

The said party of the first part, in consideration of the undertakings and agreements of the said party of the second part hereafter contained, hereby sells and conveys to the said party of the second part all its personal property of every name, kind, and description in the State of Wisconsin, except all such personal property as is used in and is appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto so soon as the same can be conveniently done.

And the said party of the first part, in consideration of the said undertakings and agreements of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the thirtieth day of September, in the 1857, for an indefinite term of time, to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances and franchises connected therewith or belonging

or incident thereto, subject only to such prior and superior liens as may or do exist thereon, and all existing contracts and agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part shall, from and after the said thirtieth day of September, and until this agreement shall be terminated in the manner hereinafter provided, operate so much of the said railroad as is ready for operation, and from time to time such portions of the same as shall be made ready for operation in such manner as will produce the largest amount of net receipts. That the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair, and that the said party of the second part shall receive and appropriate in the manner hereinafter provided all the receipts or income to be derived from the operation of said railroad.

It is further mutually agreed that the said party of the second part may, if it shall be found for the interest of said company, buy additional rolling stock, and appropriate the receipts of said railroad to the payment of the same.

The said party of the second part hereby undertakes and agrees that he will defray all the current cost and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the cost and expenses of operating the said railroad, and that he will, by the fifteenth day of every month, make out and deliver to said party of the first part, a correct statement exhibiting the total receipts and income of said railroad from all sources, during the next preceding month; also the cost and expenses, during such month, of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and the cost and expense of operating said railroad, and also exhibiting the net receipts from said railroad, after deducting such cost and expense of rolling stock and repairs and of operating, and that he will at any time, on demand of said company, or its president or secretary, furnish to the person demanding the same, a statement in detail of the items of which such statement is composed, and any officer or agent of said company, authorized by said company to do so, shall at any time have the right to examine the accounts of said party of the second part relating to the repairs of said railroad and rolling stock, and to the operating of said railroad.

And the said party of the second part further undertakes and agrees, that the said net receipts, after deducting the cost and expenses of repairs and operating as exhibited by the said monthly statements as aforesaid, shall be appropriated by him in the manner following, to wit:

1. To the payment of all coupons hereafter to become due upon nine hundred and fifty thousand dollars of the bonds of said company, secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage City, bearing date June 13th, A. D. 1854, together with the sinking fund provided for by a supplemental mortgage or deed of trust, bearing date February 18th, 1856, except such of

said coupons as are payable November 1st, 1857, and the sinking fund of twelve thousand dollars, payable November 1, 1857.

2. To the payment of all coupons hereafter to become due on one hundred and fourteen thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date on the first day of September, A. D. 1853.

3. To the payment of all coupons hereafter to become due on two hundred thousand dollars, of the bonds of the city of Milwaukee, issued to the La Crosse and Milwaukee Railroad Company,
51 secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date the thirtieth day of July, A. D. 1854.

4. To the payment of all coupons hereafter to become due on one million of dollars, of the bonds of the said railroad company, secured by mortgage or deed of trust on the railroad of said company, from Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of , A. D. 1857.

5. Whatever balance of said net receipts, as aforesaid, shall remain after the payment of the said coupons and sinking fund, shall be applied by said party of the second part in payment of the amount due, or hereafter to become due, to him by virtue, either of a certain contract between said parties, dated January twentieth, 1857, a supplemental contract between said parties, dated April 30th, 1857, or a certain contract between said parties, dated November 20th, 1856, or of a contract modifying said contract entered into between the said parties simultaneously with this contract, except such as may become due for work which shall be hereafter done, between New Lisbon and La Crosse, which is to be paid for from the means of the said company other than the said income.

And the said party of the second part further undertakes and agrees that whenever he shall have received from the earnings of the said railroad such sum as by the terms and conditions of the aforesaid contract for the construction of the said railroad, bearing date respectively November 20th, 1856, January 20th, 1857, April 30th, 1857, and the one entered into simultaneously herewith, he is or shall be entitled to receive, or whenever at any time the said party of the first part shall pay to him any balance which at such time he shall be entitled to receive, according to the terms and conditions of the said contract, that he will surrender up to the said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appertaining thereto, in good repair, together with all estate, rights, privileges, franchises, and appurtenances connnected therewith, or belonging or incidental thereto, including all the railroad buildings, tenements, fixtures, and appurtenances constructed, and all rolling stock and other personal property put upon said road by said party of the second part, by virtue of

this contract, and that he will re-convey and deliver to said party of the first part all personal property hereby conveyed, which shall not have been worn out, destroyed, or consumed in the construction or operation of the said railroad, and that he will convey and deliver to said party of the first part all personal property which shall have been acquired for said railroad in pursuance of this contract, or with the means derived from the receipts from said railroad, and that he will at such time deliver on the line of said railroad to said
52 party of the first part fifteen thousand cords of wood, and that whenever the said party of the second part shall have received as aforesaid such sum as he shall be entitled to as aforesaid, or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void.

In witness whereof the said party of the first part hath caused these presents to be signed by its president and secretary, and its corporate seal to be hereunto affixed, and the same are signed by the said party of the second part.

La Crosse and Milwaukee Railroad Company—

(Signed) By BYRON KILBOURN, [L. S.]
President.
JACKSON HADLEY,
Secretary.

[L. S.] S. CHAMBERLAIN.

Signed, sealed, and delivered in the presence of—
H. L. PALMER.
THOMAS W. BEAVER.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Be it remembered, that on this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, before the subscriber, a notary public, residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who being by me duly sworn, said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common and corporate seal of said company, and was affixed thereto by their authority; and that he as president, and Jackson Hadley as secretary, subscribed their names thereto by like authority; and on the same day before me personally appeared Selah Chamberlain, to me known to be the person described in, and who executed, the foregoing instrument, and acknowledged that he executed the same freely for the uses and purposes therein mentioned.

(Signed) H. L. PALMER,
Notary Public, Milwaukee County.

Contract.

La Crosse and Milwaukee Railroad Company with Selah Chamberlain. Copy from directors' minutes:

Resolved, That a contract be entered into with Selah Chamberlain, which shall be signed by the president and secretary, and sealed with the corporate seal of the company, in the words and figures following, to wit:

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and
53 by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland, and State of Ohio, party of the second part, witnesseth:

That the said parties have mutually undertaken and agreed, and by these presents do undertake and agree, to and with each other, that the contract heretofore entered into between the said parties, for the construction of the western division of the La Crosse and Milwaukee railroad from Portage City to La Crosse, excepting the bridge across the Wisconsin river at Kilbourn city, and which contract bears date the 20th day of January, A. D. 1857, and the supplemental contract entered into between the same parties, and bearing date the 30th day of April, A. D. 1857, shall be, and the same are, hereby modified as as follows, to wit:

The said party of the second part shall proceed to complete the construction of said railroad as far as the depot at New Lisbon, in the county of Juneau, with reasonable despatch, and by the first day of December next.

The time for completing the said railroad from New Lisbon to La Crosse is extended indefinitely, and the said party of the second part shall construct the said railroad between the two last named points as fast as and no faster than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same, in cash, or monthly estimates, according to the terms and stipulations of the aforesaid contract.

The contract entered into by and between said parties on the 20th day of November, A. D. 1856, for the ballasting that portion of the La Crosse and Milwaukee railroad extending from Beaver Dam to Portage City, is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite for doing said work, but that the motive power so used shall be a part of that specified in a contract between said parties entered into simultaneously with this contract for the leasing of said road, and that said party of the second part shall for all ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured in the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extention of the time of con-

structing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second part will sustain by reason of such extension and by loss, as teams, material, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second part is to be paid the amount now due to him, and the amount to become due to him for finishing said railroad to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due; and in further consideration of the services, risks, and personal ex-
54 penses of the said party of the second part in the operation and management of said railroad as hereinafter referred to, and more particularly set forth in said contract of lease, the said party of the first part hereby agrees to pay to the said party of the second part the liquidated sum of two hundred thousand dollars, which sum is mutually agreed upon by said parties as an equivalent for the aforesaid consideration.

It is further stipulated and agreed that by or before the 20th day of October, A. D. 1857, a full and correct statement shall be made out of the amounts due to the said party of the second part, on the 30th day of September, 1857, under and by virtue of the said contract of January 20th, 1857, April 30th, 1857, and November 20th, 1856, which sum, together with the aforesaid sum of two hundred thousand dollars, ($200,000,) shall be the balance due to the said party of the second part on the 1st day of October, 1857, and shall be charged by said party of the second part to the said party of the first part, and on the first day of every month thereafter the said party of the second part shall charge the said party of the first part with the amount which shall be due, under or by virtue of either of said contracts, or this contract, in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part with such sum as the said party of the first part shall be entitled to receive from the net earnings of the said railroad, by virtue of the said contract of lease entered into between said parties simultaneously with these presents.

It is further agreed between the said parties, that on the 1st day of July, 1858, and on the first day of each July and each January thereafter, a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be computed up to the day of making out such accounts, at the rate of twelve per cent. per annum.

It is further agreed between the said parties, whatever sums shall hereafter become due to said party of the second part, for any work done on the construction of said railroad between New Lisbon and La Crosse, shall be paid to him by said party of the first part from the means of said company derived from other sources than the income of said railroad.

In witness whereof the said party of the first part has caused these presents to be signed by its president and secretary, and the corporate

seal of said company to be affixed thereto, and the said party of the second part has affixed his signature and seal the day and year first above written.

La Crosse and Milwaukee Railroad Company,
(Signed) By BYRON KILBOURN, *President.*
[L. S.] JACKSON HADLEY, *Secretary.*
[L. S.] S. CHAMBERLAIN.

55 LA CROSSE AND MILWAUKEE R. R. CO.,
SECRETARY'S OFFICE, *Milwaukee, April* 23, 1858.

I hereby certify that the foregoing resolution is a true copy of a resolution adopted by the board of directors of this company at a special meeting held at Milwaukee on the 26th day of September, 1857, and that the preceding contract is a true and correct copy of, and the whole of the contract therein referred to, as appears from the recorded minutes.

RICHARD DOTY, *Secretary.*

Exhibit No. 4.

Contract between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain and S. H. Alden, made March 29th, 1856.

This agreement, made this 29th day of March, 1855, between the La Crosse and Milwaukee Railroad Company, of the first part, and S. Chamberlain and S. H. Alden, of the second part, witnesseth:

That the said Chamberlain and Alden, for and in consideration of the several stipulations on the part of the railroad company, hereinafter mentioned and set forth, hereby contract and agree to construct, for the said railroad company, a single track railway from Beaver Dam to Portage City, it being about thirty miles of main line; all the side track to be paid for in addition to the main line, and at the same price per mile.

The work included in this contract is the grading, bridging, culverts, ties, chairs, spikes, and laying the track, which shall be laid on sub-grade, except when ballast is found on the sections, and by centre stakes, to be done in a substantial and workmanlike manner.

Grading. The—road bed shall be graded fourteen (14) feet wide, on embankments, at sub-grade, and eighteen (18) feet in cuts; the excavations and embankments are to have such slope as the engineer may direct, but not to exceed one foot and half (1½) horizontal to one foot vertical, and no waste earth shall be deposited within three (3) feet of the tops of the slopes of excavations, nor borrowing ditches to be dug within four (4) feet of the base of embankments. The said railroad company are to furnish ground convenient to waste earth upon from excavations, and to borrow earth from for embankments for the road bed.

All abutments for bridges and culverts shall be constructed of timber, unless suitable stone can be obtained within two (2) miles of the points where the structures are to be put in; should stone be found within the above limits, the bridge, abutments, and piers shall

be of rough masonry, with good beds and joints; no backing shall be used of less thickness than four (4) inches, unless required for levelling up. Common lime mortar shall be used in all bridge masonry; culverts shall be constructed of rough stone and without mortar.

56 *Cross-ties.*—The cross-ties are to be hewed or sawed, and are to be of red, white, or burr oak, cedar, tamarack, spruce, Norway pine, black-walnut or ash, and are to be six (6) inches thick, eight (8) feet long, and all to have a bearing surface of not less than seven (7) inches. The ties shall be laid in track two and one-quarter ($2\frac{1}{4}$) feet from centre to centre, and two thousand three hundred and forty-four (2,344) ties shall be used in every mile of track.

Track-laying.—The track to be laid in the usual way of laying a T-rail track, with a common wrought-iron chair. The railroad company are to furnish the said Chamberlain and Alden with locomotive power and a sufficient number of platform or suitable cars for transportation of iron, chairs, spikes, ties, timber, and other material required during the execution of this contract, free of all charge to the said Chamberlain and Alden; said Chamberlain and Alden to load and unload all such articles.

The right of way.—The said railroad company are to furnish the right of way at such points and at such times as may be necessary for the said Chamberlain and Alden to commence work on or before the first day of May next, and completed on or before the last day of December, 1856, ready for a train of cars.

The engineers of said road shall return to said Chamberlain and Alden the actual quantities of work done each month by their sub-contractors on each section of sub-contract, all materials purchased for the use of this road, or timber, ties, or other material delivered anywhere on the line of the road between Milwaukee and the west end of this contract shall be estimated the same as though they were delivered where they are to used, and they shall be the property of the railroad company after being estimated and paid for, which shall be done on the first of each and every month. The railroad company, in consideration of the stipulations of the party of the second part of the work to be performed as herein set forth, doth hereby covenant and agree to pay to the said Chamberlain and Alden, at the rate of twelve thousand (12,000) dollars per mile for each mile of road in track, and the like sum for each mile and fractional part of a mile of side track. The payments on this contract are to be two hundred thousand (200,000) dollars of the company's first mortgage bonds at eighty (80) cents on the dollar—two hundred thousand (200,000) dollars, farm mortgage bonds at seventy (70) cents on the dollar, seventy-five thousand (75,000) dollars Portage City bonds at seventy (70) cents on the dollar, and the balance in the stock of the company at fifty (50) cents on the dollar. In case the company cannot obtain the Portage City bonds by the first day of July next, the company to pay cash instead of said bonds, at the rate of seventy (70) cents on the dollar, and the company to have the option to pay cash instead of said bonds, at the rate of seventy (70) cents on the dollar, and the company to have the

57 option to pay cash instead of stock, at fifty (50) cents on the dollar, for any amount of stock beyond the amount, if sixty thousand (60,000) dollars, which may or might be due or payable on this contract as aforesaid. The first mortgage bonds to be deposited at the date of this contract, and the farm mortgage bonds to be deposited as follows: Twenty-five thousand (25,000) dollars by the first day of May next, and the remainder by the first day of July next, to be placed in the hands of Messrs. Atwood & Co., bankers, New York, but the second party shall have the right to sell the bonds at any time they may elect, and shall place the avail to the credit of this contract, to be drawn out on the orders from the treasurer of the company, payable to the order of the party of the second part, based upon the monthly estimates which shall be made out and delivered to the second party, on or before the first day of each month, and sixty thousand (60,000) dollars in amount of stock to be issued whenever required by the said Chamberlain and Alden, which shall be entitled to all dividends accruing from and after the first day of July next, in common with all other full paid stock; provided that said stock shall be applicable to payment on the last estimate, to said Chamberlain and Alden, and that they shall pay to said company, in cash, on the first day of January next, the amount which shall then be paid by said company as dividend thereon, to any parties who may then be holders thereof.

It is further mutually agreed by and between the parties to this contract that the quantity of excavation and embankment on the portion of road embraced in this contract shall not exceed twenty thousand (20,000) yards per mile; and it is agreed that the quantities shall be as much below the above limits as practicable, consistent with a proper regard for the location of the line and construction of the work, and due care shall be taken in the location of the line to produce the most favorable result in this respect. But if the quantity per mile should exceed twenty thousand (20,000) yards, the excess to be paid for as extra work as hereinafter provided.

It is mutually agreed that all excavations from the cuts on the line of road shall be placed into embankments, where it can be done within a reasonable haul, and if not hauled over five hundred (500) feet, shall be computed excavation or embankment only; but for each one hundred (100) feet additional haul, one cent per yard extra shall be added. The railroad company agree to furnish the iron rail of the T pattern and deliver it to the second party, as required, for laying in track, and shall at all times keep a supply on hand at a convenient place to load on the cars.

The railroad company also agree to transport all materials required for the construction of the road over their line of road from Milwaukee to the end of their track free from all charges. It shall also be done without delay at any time when required by the second party or their agents.

It is also agreed that the contractors shall be passed free over the road during the time of its construction; and any of their agents necessary for their business shall be furnished with a pass

58 from the superintendent; and laborers will be passed once out to the work on passes to be furnished by the contractors or their agents on any freight train or construction train of the company.

It is mutually agreed between the parties to this agreement that the farm mortgage bonds, which are to be paid on this contract, shall be taken on farms located on or near the line of the road and east of Wisconsin river, and no mortgage shall be taken for more than two-thirds of the cash value of the farm, without estimating the increased value caused by the construction of the railroad. The titles shall be perfect and the bonds duly executed, and at least twenty-five thousand (25,000) dollars of them shall be placed in the hands of Atwood & Co., bankers, New York, on or before the first day of May next, and the balance on the first day July next, for the use of this contract. The Portage City bonds shall be duly executed and placed with Atwood & Co., as aforesaid, for the use of this contract. They shall bear eight (8) per cent. annual interest, payable in New York semi-annually; and the payment of both principal and interest, on both city and farm bonds, shall be guaranteed by the railroad company, and all bonds are to be convertible into the stock of the company, at the option of the holder.

It is expressly agreed and understood by the parties hereto that the party of the first part is to pay all accruing interest upon all bonds now issued, or that may be issued, in pursuance of this contract, promptly, as the same may become due; and in the event of the failure to do so, then it shall be optional with the party of the second part to proceed with this contract to completion, or to stop all work, and demand payment from said party of the first part, the same as if the whole had been completed: Provided, that the railroad company shall be entitled to a deduction for any work not actually done, at the same rates we may be under obligations to pay to our sub-contractors for the same or similar work.

It is further agreed and understood that should there be any rock, hard-pan, quick-sand, or indurated clay or gravel, it shall be paid for as extra work; piling and timbering the same will also be paid for extra.

And it is further agreed between the parties to this contract that if in the course of the prosecution of this contract, or after the completion of the work to be done any matter of difference or disagreement shall at any time arise, either as to the construction of this agreement or as to manner of the construction of the work herein contracted to be done, such matters of difference shall be at once submitted to three disinterested persons to act in the premises; and should the parties not be able to agree upon the third person, the two first selected shall select a third; the three so chosen shall hear the parties and decide the matters submitted to them, and the decision of a majority of them shall be final and conclusive and their decision as aforesaid shall be irrevocable.

59 The price to be paid for extra work is to be as follows: For grubbing and clearing, three hundred (300) dollars per mile;

common earth work, thirty (30) cents per cubic yard; solid rock, one (1) dollar per cubic yard; hard-pan, or indurated clay or gravel, fifty (50) cents per cubic yard; quicksand, one (1) dollar per cubic yard; piling and extra timber work, at such prices as shall be hereafter agreed upon; extra hauling, over five hundred (500) feet, to be one (1) cent per cubic yard for each additional one hundred (100) feet, as hereinbefore mentioned: Provided, that if the aggregate of earth work shall fall short of the maximum of twenty thousand (20,000) cubic yards per mile, then twenty (20) cents per yard is to be deducted from the above-mentioned prices for rock, hard-pan, indurated clay or gravel. Estimates are to be made out at the end of each month for all work done and materials delivered, from which ten (10) per centum is to be deducted, and the remainder paid in the manner hereinbefore stated; the percentage so deducted to be retained until the completion of the work, and paid on final estimate.

It is further mutually agreed, that in case the said parties of the second part shall fail to perform the work in such manner as shall give satisfactory assurance of its being completed within the time mentioned, the said company shall have the right to require such additional forces of laborers to be employed thereon as will be sufficient to insure the completion within the time limited, and in case said party of the second part shall refuse or neglect to employ such additional force, it shall be optional with said company to declare this contract abandoned by said parties of the second part, and in case of said abandonment, said company shall have the right to let the same to any other parties.

It is further understood and agreed that said Chamberlain & Alden are to aid and assist said company, as far as they can, in negotiating for, and procuring the iron rails for said road, and said company are to use all reasonable efforts and means to procure said iron rails without delay, and have them delivered at Milwaukee in time to lay the track as soon as the grading shall be prepared to receive the same, if practicable, but in case it should be found impracticable to procure said rails as aforesaid, additional time should be given for laying the track and completing the road, and no claim for damages shall be set up in consequence of any such delay by either party, but in case the work should be so delayed, the retained percentage is to be paid to said Chamberlain & Alden, as upon final estimate, they, however, completing the road whenever the iron shall be furnished.

In testimony whereof the said company has caused these presents to be signed by their president, and the said parties of the
60 second part have hereunto subscribed their hands, the day and year first above written.

La Crosse and Milwaukee Railroad Company—
By BYRON KILBOURN, *President.*
S. CHAMBERLAIN.
S. H. ALDEN.

Resolved, That the contract entered into between this company, by B. Kilbourn, president, and S. Chamberlain and S. H. Alden, on

the 29th day of March, 1856, be, and hereby is, approved, ratified, and confirmed, and that a copy of this resolution be indorsed by the secretary on each copy of said contract.

OFFICE OF THE L. C. & M. R. R. Co.,
Milwaukee, April 16, 1856.

I certify the above to be a true copy of a resolution of the board of directors of this company, adopted in regular session at this date.

LEVI BURNELL, *Secretary.*

Received, Milwaukee, March 19, 1856, from the La Crosse and Milwaukee Railroad Company, payment in full for all work done, and materials furnished under this contract; the contract for estimating, piling, and paying for filling in Beaver Dam pond, still remaining in force.

CHAMBERLAIN & ALDEN.

In consideration of the mutual covenants herein contained, it is agreed by and between the La Crosse and Milwaukee Railroad Company and Chamberlain and Alden that the contract between them for the construction of the road of said company, from Beaver Dam to Portage City, shall be modified as follows, viz:

Instead of the usual mode of construction and embankment across the Beaver Dam pond, a pile bridge is to be substituted and done as follows: The piles are to be of such length, and driven to such depth as to make a secure, firm, and permanent bridge, and of such thickness as to give the necessary strength and firmness to the structure, when finished, and to be driven in pairs, not exceeding six feet apart, measuring lengthwise of the bridge, and a suitable distance from each other to bear centrally under the track timbers; the track timbers to be of sawed oak, twelve inches square; and the cappings to be of same timber, three inches thick, and not less than ten inches wide, to be secured by tressels, one and one-half inch thick, and proper length; or by iron bolts, at option of contractors.

Said Chamberlain and Alden agree to do said work in a complete and workmanlike manner, for and at the following prices, to be paid in the manner stipulated by the contract, to which this is a modification, viz: For piles, fifteen feet long and under, three dollars
61 each, and twenty cents additional for each extra foot in length; for each cap, seventy-five cents; for each foot of track timber, lineal, twenty-five cents; for drawing each pile, three dollars; levelling each pair, fifty cents; and contingencies, one dollar to each six feet of length of the bridge.

The above prices includes all materials, labor, and workmanship incident to the building of the bridge. Said company agree to pay the prices aforesaid, for furnishing materials and doing said work, and in addition thereto, to pay the sum (or at the rate) of four thousand dollars per mile as profits thereon, that being the amount of average estimate profits on the work included in the aforesaid contract, and the length of the line occupied by said bridge is to be deducted from

that contract. It is further mutually agreed and understood that the said Chamberlain and Alden shall use all the diligence to get this work done in season to complete their contract by the 31st day of December next, but should they be unable to do so they shall have an extension of time, and neither party shall have any claim for damages. The railroad company to furnish motive power and cars to transport all materials required for this work over their own road, free of charge, and it shall be done when required by Chamberlain and Alden, or their agents, at any and all times during the day time, and at such times as not to interfere with the regular running of the trains.

And it is further mutually agreed that if said company should not exactly comply to the letter with the terms of said contract, in relation to the delivery of securities, the following shall be accepted as a compliance, viz: to deliver one hundred thousand dollars in amount of the farm mortgage bonds by the first day of July next, fifty thousand of such securities by the first day of August next, and fifty thousand dollars of the same by the first day of September next.

La Crosse & Milwaukee Railroad Company—

By BYRON KILBOURN, *President.*

CHAMBERLAIN & ALDEN.

Estimate cost of doing the extra work of piling over the pond near Beaver Dam:

For each pile delivered, 15 feet long and under	$3 00
For driving same	3 00
For capping same	75
For track timbers	1 50
For levelling	25
For contingencies, say	50
	8 00
Error in cost of track timbers	1 00

The piles to be driven not over six feet from centre to centre.

Should it be necessary to procure the timber required for
62 the above work between Beaver Dam and Milwaukee, the railroad company to furnish motive power and cars for transporting the same.

NOTE. The above estimate includes labor and the cost of two pile-drivers of the estimated value of eight thousand dollars.

Exhibit No. 5.

BALLASTING CONTRACT.

Memorandum of an agreement made and entered into this twentieth day of November, 1856, by and between the La Crosse and Milwaukee Railroad Company of the first part, and Selah Chamberlain of the second part, witnesseth:

That for and in consideration of the stipulations and payments

hereinafter mentioned, the said party of the second part hath and doth hereby agree to ballast that portion of the La Crosse and Milwaukee railroad extending from the city of Beaver Dam to the city of Portage, the work to be done in a good and workmanlike manner, for the sum of forty cents per cubic yard, the material to be measured in the bank at the gravel pits; the railroad company furnishing motive power and gravel cars sufficient to do the work to good advantage, (not exceeding one locomotive engine and forty dumper cars, or in their stead twenty-four platform cars, unless a greater number of locomotive engines and dumper or platform cars shall be mutually agreed upon,) free of all cost to the said second party. The track shall be raised at least eighteen inches above sub-grade, and as much more as shall be required, and to be completed in all respects under the direction and subject to the approval of the engineer of the company in charge of the work. The said railroad company are to furnish all grounds required for gravel pits, and track necessary for the same; the work to be prosecuted in such a manner as not to hinder or delay the passage of any of the regular trains of the company; but it is agreed and understood that the said railroad company are to keep the track in good running order during the execution of this contract, and pay the actual cost of any detentions that may be caused by the railroad company's trains being behind time; but that no claim shall be made by the party of the second part for detentions unless the company's trains are more than thirty minutes behind time-table time.

It is also agreed that whenever freight trains are twenty minutes behind time, the gravel train shall be allowed to run out in the same direction as the expected train is running, and dump, always stationing a man with a red flag, at least one-fourth of a mile from the gravel-pit run from, to warn approaching trains. It is also agreed that the party of the second part will, upon the request of the su-
63 perintendent of the road, transport to and dump gravel upon any portion of the line of the same embraced in the contract, when gravel is required to repair portions of said road before the same is ballasted, and that the work herein contracted to be done shall be completed on the thirty-first day of July, A. D. 1857.

It is also agreed that the party of the second part may furnish thirty dumper cars at his own cost and charge, to be used on the work herein contracted to be done, and that the party of the first part will, upon the completion of the said work, purchase the said dumper cars, and pay to the said party of the second part the actual cost and charges incurred in the purchase and transportation of the said dumper cars, from the point where the same were purchased, to the city of Milwaukee; said payment to be made on the first day of August, 1857.

It is also agreed that for all work done under this contract monthly estimates shall be made by the engineer of the party of the first part, on the first day of each month, for all work done during the preceding month, and that for all work so done prior to the first day of May, 1857, payment shall be made in the company's notes

due and payable in the city of New York six months from the time of the rendering of said estimates, with interest at the rate of seven per cent. per annum, and for all work done under this contract subsequently to the first day of May, 1857, payments shall be made in cash on monthly estimates, to be made as hereinbefore provided.

In testimony whereof the said parties have signed this memorandum in the manner following, to wit, the La Crosse and Milwaukee Railroad Company, by Moses Kneeland, vice president thereof, (the president being absent,) and the party of the second part for himself.

La Crosse & Milwaukee Railroad Company—
By MOSES KNEELAND, *Vice President.*
S. CHAMBERLAIN.

64 *Exhibit No.* 6.

Contract between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain.

This agreement, made and entered into this twentieth day of January, 1857, between the La Crosse and Milwaukee Railroad Company, of the first part, and Selah Chamberlain, of Cleveland, Ohio, party of the second part, witnesseth:

That the said party of the second part, for and in consideration of the several covenants, stipulations, and payments on the part of the said party of the first part, hereinafter mentioned and set forth to be made and performed by the said party of the first part, hereby contracts and agrees to construct for said party of the first part a single track sub-grade railroad, except when ballast can be found on the section known as the "western division" of the La Crosse and Milwaukee railroad, extending from Portage City to La Crosse, (except the bridge at Kilbourn City,) it being supposed to be about one hundred and ten miles of main line—all the side track to be paid for in addition to the main line, and at the same price per mile. The work included in this contract is the grading, bridging, culverts, ties, chairs, spikes, and laying the track, which shall be laid by centre stakes, and without grades. The work to be done in a good, substantial, and workmanlike manner, for the sum of twelve thousand dollars per mile of main line, and the same sum per mile of side track.

Grading. The road bed shall be graded fourteen feet wide in embankments at sub-grade, and eighteen feet wide in excavations. The excavations and embankments are to have such slopes as the engineer may direct, but not to exceed one foot and a half horizontal to one foot vertical; and no waste shall be deposited within three feet of the top of the slope of excavations, nor any borrowing ditches be dug within five feet of the base of embankments. The said railroad company are to furnish grounds convenient to waste earth when from excavations, and to borrow earth from for embankments for the road bed.

Masonry. All abutments for bridges and culverts shall be constructed of timber, unless suitable stone can be obtained within two miles of the point where the structures are to be put in. Should stone be found within the above limits, the bridge abutments and piers (if any) shall be rough masonry, with good beds and joists. No bulking shall be used of less thickness than four inches, unless required for levelling up. Common lime mortar shall be used in all bridge masonry. Culverts shall be constructed of rough stone and without mortar.

Cross-ties. The cross-ties are to be hewed or sawed, and to be of red, white, burr and black oak, cedar, spruce, tamarack, gray or Norway pine, black walnut or ash, and are to be six inches
65 thick, eight feet long, and are to have a bearing surface of not less than seven inches. Ties shall be laid in track two feet and three inches from centre to centre, and twenty-three hundred and forty-four ties shall be laid in each mile of track.

Track-laying. The track shall be laid in the usual way of laying sub-grade track with a T rail, and a common wrought iron chair, the spike to be five inches long and a half an inch square. The said party of the first part agree to furnish the said party of the second part with locomotive power and a sufficient number of platform or suitable cars for the transportation of iron, chairs, spike, ties, timber, and other materials on said western division required during the execution of this contract, free of all cost or charge to said second party; and the said party of the first part also agrees that the contractors shall be passed free over the road during the construction, and any of his agents necessary for their business shall be furnished with a pass from the president or superintendent, and laborers, with their families and baggage, once out to the work on passes furnished by the contractor or his agent on any freight or construction train.

Extra-work. It is hereby mutually agreed and stipulated between the parties to this agreement, that all grubbing and clearing, all excavations of rock, quicksand, indurated clay, or cemented gravel, all foundations for masonry, all piling and hauling of excavations or embankments over five hundred feet, shall be considered extra work, and shall be paid for at the following rates, to wit: Grubbing and clearing, three hundred dollars per mile the entire length of main line; loose rock excavations, seventy-five cents per cubic yard; dry solid rock, one dollar per cubic yard; rock excavation in dividing ridge, one dollar and twenty-five cents per cubic yard.

Quicksand excavations, one dollar per cubic yard; hard-pan, indurated clay, or cemented gravel, seventy-five cents per cubic yard; for all hauling of excavation or embankments over five hundred feet, one cent extra per cubic yard for each one hundred feet: provided, that if the aggregate of earth works shall fall short of the maximum of 20,000 cubic yards per mile, then 25 cts. per yard is to be deducted from the above-mentioned price for rock, hard-pan, indurated clay or gravel, sub-division and limits of quantities.

It is further mutually agreed and understood that the work em-

braced in this contract is to be divided into three sub-divisions of nearly equal distances; and should the quantities of excavations and embankments, or any one or more of the sub-divisions, exceed twenty thousand yards per mile, such excess shall be paid for as extra work, at the rate of forty cents per cubic yard; and it is agreed that the quantities shall be as much below the above limits as practicable consistent with a proper regard for the location of the work, and due care shall be taken in the location of the line to produce the most favorable result in this respect.

It is also agreed that all excavations from the cuts shall be hauled into embankments when it can be done with a reasonable haul, and shall be computed as excavation or embankment only; the railroad company agree to furnish the iron rails of the T pattern, notched, ready for laying, and deliver at Portage City a sufficient amount to lay the track to Kilbourn City, and at the latter point the balance sufficient to lay the track to La Crosse, and pile the same in a convenient place to load on the cars, and keep a full supply always on hand, and to forward to some points all chairs and spikes required to be used in laying said iron in track free of charge for transportation, and to furnish motive power and cars to transport to Portage City all ties or materials for construction now owned by the party of the second part, and on the line of the eastern division of the road of the party of the first part.

It is also agreed by and between the parties that the said party of the first part agrees to do all engineering, and to have the work at all times ready for said party of the second part, so as not to hinder or delay the work, and to have the work divided off into sections of one mile each, being each regular surveyed mile on the line.

The said first party also agrees to furnish all rights of way, and obtain grounds for wasting materials on from excavations, and borrowing from for embankments, so as not to delay or hinder the progress of the work.

And it is further mutually agreed between the parties to this contract that if, in course of the prosecution of this contract, or after the completion of the work to be done, any matter of difference or disagreement shall at any time arise, either as to the construction of this agreement or as to the manner of doing the work herein contracted to be done, all such matters of difference shall be at once submitted to three disinterested persons to act in the premises; and should the parties not be able to agree on the third person, the two first selected shall select a third. The three so chosen shall hear the parties and decide the matter submitted to them, and the decision of a majority of them shall be final and conclusive, and their decision, as aforesaid, shall be irrevocable.

It is further agreed that any extra work required to be done, for which no price is specified, shall be paid for at a fair price.

The work shall be commenced by the first day of February next, and be completed to Kilbourn City on the first day of October next, and to La Crosse by the thirty-first day of October, eighteen hundred and fifty-eight. The said first party agree that the bridge at

Kilbourn City shall be completed and ready for the track by the first day of October next.

Estimates and payments. Estimates shall be made on the first day of each month by the engineer in charge of said work of the amount of work done and materials furnished by said party of the second part during the preceding month, and of the proportion which such work and materials bear to the whole work and materials embraced in this contract, and also separate estimates of the amount of work done and materials furnished by each sub-contractor; and copies of all such estimates shall be furnished to the said party of the second part, and the said party of the first part covenants and agrees
67 to pay to said party of the second part, on the fifth day of each month, ninety per cent. of the amount of such estimate, so to be made on the first day of each month, such payments shall be ninety per cent. of such proportional sum of the whole amount to be paid under this contract, as such work and materials so estimated bear to the whole work and materials embraced in this contract. All estimates shall be paid by sight drafts payable in New York. The retained percentage shall be paid on the completion of each division of 34 miles.

It is also mutually agreed and understood, by and between the parties hereto, that at any time during the progress of the said work the party of the first part shall have the right to suspend the performance thereof during such time as they may think expedient, and again require the same to be resumed by the party of the second part without being held liable for damages for any such suspension: Provided, that at least thirty days' notice shall be given to said party of the second part of any such suspension being required, and that a reasonable extension of time shall be given to the said party of the second part, for the completion of the contract, for any detention caused by such suspension.

In testimony whereof the said company has caused these presents to be signed by their president, and the said party of the second part has hereunto subscribed his hand, the day and year first above written.

La Crosse & Milwaukee Railroad Company—
By BYRON KILBOURN, *President.*
S. CHAMBERLAIN.

Exhibit No. 7.

This memorandum of agreement entered into between the La Crosse and Milwaukee Railroad Company, party of the first part, and Selah Chamberlain, party of the second part, witnesseth:

That the party of the first part has agreed, and by these presents does agree to and with the party of the second part, that in case the party of the second part fails to complete the railroad of the party of the first part, to Kilbourn City, by the first day of October, 1857, and to the city of La Crosse by the thirty-first day of October, 1858, as stipulated in an agreement made and entered into this day, that

no claim for damage shall be made for the non-performance of that portion of the said contract requiring the completion of the said railroad to the points at their respective dates above named, unless the said railroad is not completed to Kilbourn City on the first day of November, A. D. 1857, and to the city of La Crosse on the thirty-first day of December, A, D. 1858. And it is further agreed by and between the parties hereto that in case the party of the first part fails to complete to the bridge over the Wisconsin river, at Kilbourn City, by the first day of October next, as stipulated in the agreement hereinbefore mentioned, that no claim for damage shall be made by the party of the second part for the non-performance of that
68 portion of the said contract requiring the completion of the said bridge on the first day of October, unless the said bridge is not completed by the first day of November, 1858.

In witness whereof the said company have caused these presents to be signed by their president, and the said party of the second part has hereunto subscribed his hand, this twentieth day of January, A. D. 1857.

La Crosse & Milwaukee Railroad Company—
By BYRON KILBOURN, *President.*
S. CHAMBERLAIN.

Exhibit No. 8.

It is mutually agreed by and between the parties to the within contract, that instead of a through cut at the dividing ridge, as stated in said contract, the said parties hereby agree to make a tunnel, and the following shall be the prices for the extra work, viz:

Excavation of approaches, $200 per cubic yard.
Excavation of tunnel, $5 00 yer cubic yard.
Arching, $12 00 per perch.
Hauling stone over two miles, $50 00 per perch.
Timber used in work, per lineal foot, 25 cents.
Packing, $3 00 per perch.
Sinking shaft, $10 00 per cubic yard.

Should there be any work not specified herein, and required to be done, it shall be paid for at a fair price. The tunnel shall be twenty-four feet wide at sub-grade of road, and twenty-two feet high under the arch, or such other dimensions as the engineer of the first party may direct. All hauling to be as per contract.

La Crosse & Milwaukee Railroad Company—
By EDWIN H. GOODRICH,
Vice President.
S. CHAMBERLAIN.

Milwaukee, April 30th, 1857.

Exhibit No. 9.

CONTRACT.

La Crosse and Milwaukee Railroad Company with Selah Chamberlain. Copy from directors' minutes.

Resolved, That a contract be entered into with Selah Chamberlain, which shall be signed by the president and secretary, and sealed with the corporate seal of the company, in the words and figures following, to wit:

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first
69 part, and Selah Chamberlain, of the city of Cleveland, and State of Ohio, party of the second part:

Witnesseth, that the said parties have mutually undertaken and agreed, and by these presents do undertake and agree, to and with each other that the contract heretofore entered into between the said parties, for the construction of the western division of the La Crosse and Milwaukee railroad, from Portage City to La Crosse, excepting the bridge across the Wisconsin river at Kilbourn City, and which contract bears date the 20th day of January, A. D. 1857, and the supplemental contract entered into between the same parties, and bearing date the 30th day of April, A. D. 1857, shall be, and the same are, hereby modified as follows, viz:

The said party of the second part shall proceed to complete the construction of said railroad as far as the depot at New Lisbon, in the county of Juneau, with reasonable despatch, and by the first day of December next. The time for completing said railroad from New Lisbon to La Crosse is extended indefinitely, and the said party of the second part shall construct the said railroad, between the two last-named points, as fast as and no faster than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same in cash, or monthly estimates, according to the terms and stipulations of the aforesaid contract.

The contract entered into by and between said parties on the twentieth day of December, A. D. 1856, for the ballasting that portion of the La Crosse and Milwaukee railroad extending from Beaver Dam to Portage City, is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite for doing said work, but that the motive power so used shall be a part of that specified in a contract between said parties entered into simultaneously with this contract for the leasing of said road, and that said party of the second part shall, for all ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured in the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extension of the time of constructing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second part will sustain by reason of such extension, and by loss, as teams, materials, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second part is to be paid the amount now due to him, and the amount to become due to him for finishing said railroad to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due, and in further consideration of the services, risks, and personal expenses of
70 the said party of the second part in the operation and management of said railroad as hereinafter referred to and more particularly set forth in said contract of lease, the said party of the first part hereby agrees to pay to the said party of the second part the liquidated sum of two hundred thousand dollars, which sum is mutually agreed upon by said parties as an equivalent for the aforesaid consideration.

It is further stipulated and agreed that by or before the 20th day of October, A. D. 1857, a full and correct statement shall be made out of the amounts due to the said party of the second part on the 30th day September, 1857, under and by virtue of the said contracts of January 20th, 1857, April 30th, 1857, and November 20th, 1856, which sum, together with the aforesaid sum of two hundred thousand dollars, (200,000,) shall be the balance due to the said party of the second part on the 1st day of October, 1857, and shall be charged by said party of the second part to the said party of the first part, and on the first day of every month thereafter, the said party of the second part shall charge the said party of the first part with the amount which shall be due under or by virtue of either of said contracts or this contract in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part with such sum as the said party of the first part shall be entitled to receive from the net earnings of said railroad, by virtue of the said contract of lease entered into between said parties simultaneously with these presents.

It is further agreed between the said parties that on the first day of July, 1858, and on the first day of each July and each January thereafter, a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be computed up to the day of making out such accounts, at the rate of twelve per cent. per annum.

It is further agreed between the said parties that whatever sums shall hereafter become due to said party of the second part, for any work done on the construction of said railroad between New Lisbon and La Crosse, shall be paid to him by said party of the first part from the means of said company derived from other sources than the income of said railroad.

In witness whereof the said party of the first part has caused these

presents to be signed by its president and secretary, and the corporate seal of said company to be affixed thereto, and the said party of the second part has affixed his signature and seal the day and year first above written.

La Crosse and Milwaukee Railroad Company—

[L. S.] By BYRON KILBOURN,
President.

JACKSON HADLEY,
Secretary.

[L. S.] S. CHAMBERLAIN.

71 LA CROSSE AND MILWAUKEE R. R. Co.,
SECRETARY'S OFFICE, *Milwaukee, April* 23, 1858.

I hereby certify that the foregoing resolution is a true copy of a resolution adopted by the board of directors of this company at a special meeting held at Milwaukee, on the 26th day of September, 1857, and that the preceding contract is a true and correct copy of, and the whole of, the contract therein referred to, as appears from the recorded minutes.

RICHARD DOTY,
Secretary.

Exhibit No. 10.

Contract to build the road from New Lisbon to Tomah.

This agreement, made and entered into this twelfth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse and Milwaukee Railroad Company, party of the first part, and Selah Chamberlain, of Cleveland, Ohio, party of the second part:

Witnesseth, that the said party of the second part, for and in consideration of the several covenants, stipulations, and payments on the part of the said party of the first part, hereinafter mentioned and set forth, to be made and performed by the said party of the first part, hereby contracts and agrees to construct for said party of the first part a single track railroad upon and along the line of the railroad of the said party of the first part, as at present located, extending from New Lisbon, on the line of said railroad to the junction, so called, at the village of Tomah, the western terminus of that portion of said road hereby agreed to be constructed to be fixed and determined by the president of the said La Crosse and Milwaukee Railroad Company, and to be on the farm of Solomon D. Hollister, and within eighty rods of the junction of the lines of the said road as at present located, and to fully complete the same on or before the first day of October, in the year one thousand eight hundred and fifty-eight. The work included in this contract is all the work required to fully construct that portion of the road of the said company hereinbefore described, according to the specifications and requirements of a contract entered into by and between the parties aforesaid, bearing date the twentieth day of January, A. D. 1857, for the construction of the

western division of the road of said company, viz: grading, bridging, culverts, ties, chairs, spikes, and laying track, and also including grubbing and clearing and ballasting, hauling of materials and iron rails, and all other work and materials necessary to fully complete and finish the same, for the sum of three hundred and fifty thousand dollars, payable in the bonds of the said company, secured by a mortgage or deed of trust heretofore executed to Greene B. Bronson, Shephard Knapp, and James T. Soutter, as trustees, upon the western division of the said road, and the title of the said company, present and
72 prospective, to the lands granted by Congress to aid in the construction of said road, and commonly called the land grant bonds of said company, at the par value thereof, as hereinafter provided. And the said Chamberlain agrees to furnish and provide, and transport at his own cost and expense, all the materials required in and for the work aforesaid, except the iron rails, which are to be furnished and provided by said party of the first part, and delivered to the said Chamberlain, at the depot of the La Crosse and Milwaukee Railroad Company, in the city of Milwaukee, free of duties.

It is also agreed by and between the parties aforesaid that the said party of the first part shall do all the engineering, and shall have the work laid out and divided off into sections, and shall procure and furnish and provide all the right of way and wasting grounds, and borrowing pits, as required and provided in said contract, dated the 20th day of January, A. D. 1857.

And the said party of the first part covenants and agrees to and with the party of the second part, that the said party of the first part will, on or before the first day of January next, deposit with Greene C. Bronson, esq., of the city of New York, trustee, three hundred and fifty of said bonds, of the said company hereinbefore described, amounting to the par value thereof to three hundred and fifty thousand dollars, to be held by him for said company, and as their agent, until paid by said Chamberlain, and to be paid over by the said Greene C. Bronson to the said party of the second part as hereintofore provided.

Estimates and payments.

Estimates shall be made on the first day of each month, commencing on the first day of January next, by the engineer in charge of said work, of the amount of work done and the materials furnished by the said party of the second part during the preceding month, and of the proportion which such work and material bears to the whole work and materials embraced in this contract, and also separate estimates of the amount of work done and materials furnished by each sub-contractor, and copies of all such estimates shall be furnished to the said party of the second part, and copies of all such estimates (other than the separate estimates of work done by sub-contractors) shall also be furnished to the said Greene C. Bronson; and the said party of the first part hereby covenants and agrees that the said Greene C. Bronson shall pay to the said party of the second part each month, on the presentation and delivery to him of a copy of such monthly estimate,

the amount thereof in and out of the said bonds so to be deposited with him as aforesaid at the par value thereof, so that the said party of the second part shall be paid each month such proportional sum of the whole amount to be paid under this contract as such work and materials done, furnished, and provided in the preceding month, and so estimated, shall bear to the whole work and materials embraced in this contract. It is further stipulated that this contract also
73 includes the construction of a side track or turn-out at the Red mills, and also at Tomah, and the said Chamberlain is not to be charged by said company for the transportation of iron or materials over said road.

And it is further agreed by and between the parties to this instrument that nothing in this contract contained shall be construed as either affirming or disaffirming any previous contract, judgment, or settlement which said Chamberlain claims to have with or against the said company, or as affecting the legal construction of any such contract, the true object of this contract being to secure the construction of said road between the points herein named, independently of any question at dispute which has arisen or may arise between the parties hereto, or other matters; this contract being to the extent of the construction of said road between said points and no further a substitute for and in lieu of any former contract which said Chamberlain has or claims with said company.

In testimony whereof said company has caused these presents to be signed by their president, and the said party of the second part has subscribed the same the day and year above first written.

La Crosse and Milwaukee Railroad Company—
[L. S.] By STEPHEN CLARK, *President.*
[L. S.] S. CHAMBERLAIN.

Exhibit No. 11.

Contract to build the road from Tomah to La Crosse.

This agreement, made and entered into this first day of January, A. D. 1858, by and between the La Crosse and Milwaukee railroad Company, party of the first part, and Selah Chamberlain, of Cleveland, Ohio, party of the second part, witnesseth:

That the said party of the second part, for and in consideration of the several covenants and stipulations on the part of the said party of the first part hereinafter mentioned and set forth, to be made and performed by the said party of the first part, hereby contracts and agrees to construct for said party of the first part a single track railroad, including all necessary side tracks, upon and along the line of said railroad of the said party of the first part, as at present located, extending from the junction at or near the village of Tomah to the Mississippi river at the city of La Crosse, the western terminus of said road; the party of the first part reserving the right to change or vary the line of location of said road by paying the said Chamberlain the extra cost, if any, caused by such changes in the

aggregate, and to fully complete the same on or before the first day of January, 1859.

74 The work included in this contract is all the work required to fully construct that portion of road of said company hereinbefore described according to the specifications and requirements of a contract entered into by and between the said parties aforesaid, bearing date the 20th day of January, 1857, except the tunnel, which is to be excavated to a sufficient dimension for a single track railroad for the construction of the western division of the road of said company, viz: grading, bridging, ties, culverts, cattle guards, chairs, spikes, and laying track, and also including grubbing and clearing and hauling of materials, and all other work required to complete and finish the same to sub-grade, the track to be laid to set grade stakes. The said party of the second part also further agrees to pay the duties on the iron required to lay the track from the village of Tomah to the city of La Crosse, including all necessary turnouts and side tracks, for the sum of one million five hundred thousand dollars, payable in the bonds of said company, secured by a mortgage or deed of trust heretofore executed to Greene C. Bronson, Shepard Knapp, and James T. Soutter, as trustees, upon the western division of said road, and the title of said company, present and prospective, to the lands granted by Congress to aid in the construction of such roads, and commonly called the land grant bonds of said company, at the par value thereof, as hereinafter provided. And the said Chamberlain agrees to furnish and provide and transport, at his own expense, all the materials required in and for the work aforesaid, except the iron rails, which are to be furnished and provided by the said party of the first part and delivered to the said Chamberlain at the depot of the said La Crosse and Milwaukee railroad in the city of Milwaukee, subject to the duties thereon, and no charge to the said Chamberlain shall be made for transporting the iron rails or other materials over the line of said railroad by said party of the first part.

It is also agreed by and between the parties aforesaid that the said party of the first part shall do all the engineering and shall have the work laid out and divided into sections, and shall procure and furnish and provide all right of way and wasting grounds and borrowing pits, as required and provided for in said contract, dated the 20th day of January, 1857.

And the said party of the first part covenants and agrees to and with the said party of the second part that the said party of the first part will, on or before the first day of February next, pay and deliver to the said party of the second part the full sum of one million five hundred thousand dollars in the bonds of said company of the description hereinbefore mentioned, including therewith the same amount of privilege stock such as the said company have heretofore issued with the same class of bonds. Estimates shall be made on the first of each and every month, commencing on the first day of February next, by the engineer in charge of said work, of the

75 amount of work done and materials furnished by the said party

of the second part during the preceding month, and of the proportion which said work and materials bear to the whole work and materials embraced in the contract; and also separate estimates of the amount of work done and materials furnished by each sub-contractor, and copies of all such estimates shall be furnished to the said party of the second part. And the party of the second part shall be credited on the books of said company for such proportional sum of the whole amount to be paid under this contract as the work done and materials furnished embraced in such monthly estimates bears to the whole work and materials included in this contract. It is also further agreed that the said party of the first part shall have the right to change the location of the line or direction of said road into the city of La Crosse from the north La Crosse route, by paying to said Chamberlain the increased cost of construction and materials to be furnished by reason of such change of route or line of said road.

The party of the second part also covenants and agrees to return to the party of the first part one hundred and twenty-nine land grant bonds of said company, delivered to said Chamberlain in March last, with the coupons attached, due on and after the first day of August, 1858.

It is understood and agreed that all claims to damages by either party against the other, arising from any breach of the contract of 20th of January, 1857, happening prior to this date, are by this contract mutually released, settled, and extinguished, except such as have already been adjusted between the parties.

In witness whereof the said company has caused these presents to be signed by its president, and the said party of the second part has subscribed the same the day and year first above written.

La Crosse and Milwaukee Railroad Company—
By STEPHEN CLARK, *President.*
S. CHAMBERLAIN.

76 *Exhibit No.* 12.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the third day) of January, A. D. 1859; present the Honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-first day of the said term, to wit: on the eleventh day of February, A. D. 1859, the following proceedings were had, to wit:

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Selah Chamberlain. } In equity.

This day came the parties, by their counsel, and on due considera-

tion of the pleadings, proofs, and arguments of counsel, it is thereupon ordered, adjudged, and decreed by the court that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal property, (except such as is used on the Milwaukee and Watertown division of said railroad,) and leased to said Chamberlain their said railroad and appurtenances, rights, franchises, and privileges be, and hereby is, vacated, annulled, and made void, so that the same shall not hereafter be of any force or effect whatever.

And that the said Selah Chamberlain be, and hereby is, perpetually enjoined and restrained from using, managing, running, controlling, or meddling with said railroad, or the rolling stock, personal property, or any of its appurtenances or franchises, or any thing connected therewith, under or by virtue of said article of agreement.

And it is further ordered, adjudged, and decreed by the court that the judgment of the said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company entered in this court on the
77 second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon be, and hereby are, vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever.

And it is further ordered, adjudged, and decreed by the court that the said defendant, Selah Chamberlain, pay the costs to be taxed, so far as they accrued in this proceeding against him; and that he pay the same within twenty days, or in default thereof an execution be issued against him for the same.

And as the lease and assignment of the said company to D. C. Freeman has expired by its own limitation, it is further ordered, adjudged, and decreed by the court that the defendant, D. C. Freeman, pay the costs to be taxed, so far as they accrued in this proceeding against him, within twenty days, or in default thereof an execution be issued against him for the same.

And it is further ordered, adjudged, and decreed by the court that the La Crosse and Milwaukee Railroad Company pay the costs to be taxed, so far as they accrued in this proceeding against it, within twenty days, or in default thereof an execution to be issued against it for the same.

And it is further ordered that reference be, and hereby is, made to a master of this court to ascertain and report the annual income of the several lots described in the bill, as having been conveyed to Moses Kneeland and James Ludington from the time of their said purchase, together with a statement of the interest thereon. And also to ascertain and report the amount of the actual cost of permanent improvements made on said lots by said Kneeland and Ludington, together with interest thereon; and also the amount of liens and taxes on said lots that have been paid by said Kneeland and Ludington, or by C. D. Nash for them, together with interest on the

same. And that this bill be retained for further decree and proceedings after the coming in of said report.

It is ordered by the court that in case of appeal by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, or either of them, a bond to authorize a supersedeas shall be given and filed with sufficient sureties, to be approved by the court or judge, in the penal sum of one hundred and fifty thousand dollars.

A. G. MILLER.

Whereupon a subpœna issued, in the words and figures following, to wit:

78 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

The President of the United States of America to Selah Chamberlain, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of June next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by Milwaukee and Minnesota Railroad Company. And to do further and receive what our said court shall have considered in that behalf, and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Selah Chamberlain if to be found in his district, and due return thereof make.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this ninteenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

MATTHEW H. CARPENTER, *Solicitor.*

[50-cent int. rev. stamp.]

It is ordered by our said court that the said Selah Chamberlain, the defendant aforesaid, do enter his appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid, otherwise the bill filed may be taken as confessed.

79 MAY 30, 1864.

Subpœna returned indorsed: "Served on the within named Selah Chamberlain by delivering to him personally a copy of this subpœna this 19th day of May, 1864.

"D. C. JACKSON, *Marshal.*

"By W. S. JACKSON, *Deputy.*

"Fees, $2 46."

JULY 20, 1864.

This day came the complainant, by Matthew H. Carpenter, its solicitor, and filed its amended bill of complaint, in the words and figures following, to wit:

80 Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

THE MILWAUKEE & MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.

Amendment to the bill of complaint of the Milwaukee and Minnesota Railroad Company, complainant, against Selah Chamberlain, defendant, exhibited and filed in said court on the 19th day of May, A. D. 1864.

1st amendment. Strike out all of said original bill of complaint after the address thereof and description of parties therein, and insert in the place and stead thereof as follows, viz:

That the La Crosse and Milwaukee Railroad Company was, from the first of January, 1850, until the 21st day of May, A. D. 1860, a corporation existing under the laws of the State of Wisconsin, and that during that time its business affairs were managed by a board of directors; that about the 21st day of June, A. D. 1858, the said company was indebted to a large amount of floating debt, accumulated for rolling stock and materials furnished and provided, and labor performed for said company, which was unsecured upon the railroad or other property of said company; and that a large number of farmers along the line of said company's railroad had before then loaned their credit in form of bonds and mortgages, to aid said company in the construction and equipment of its said railroad; which bonds and mortgages had been, before then, used by the said company, with a stipulation on its part, with and to said farmers, to pay the interest that might accrue thereon, and that a large sum of said interest which said company was bound to pay as aforesaid had become due, and the said company was unable to pay the same, and proceedings were threatened against such farmers to enforce payment of such interest; and that the said company, for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute, and perfect, ready to be negotiated, sold, delivered, and transferred in payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and year, and payable in A. D. 1888, with interest at seven per cent., payable semi-annually on the first day of January and July in each year, with coupons

for said interest to said bonds respectively attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did, on the said 21st day of June, 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust in due form of law, and as it by law had authority to do, to William Barnes, to secure the payment of said last-named bonds and the interest thereon, in and by which said mortgage or deed of trust, said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces, or parcels of land which then were or thereafter might be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted, or might thereafter constitute, or be a part of, or appertain to, said railroad, whether then made or to be made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on, or appertaining to, said railroad, whether then made or built or to be built and made thereafter; and all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for, or used on, said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been or might thereafter be procured for or used in connection with such railroad.

And also all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse, together with other property and things in said mortgage described; and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, trustee, and was by said trustee thereafter caused to be duly and legally recorded in the office of the secretary of state of the State of Wisconsin; and as the plaintiff says, on information and belief, in the offices of the registers of deeds in the several counties through which said railroad passes and was then located.

31 That on the 11th day of August, A. D. 1858, the said company made, signed, sealed, and delivered to said Barnes, trustee, a certain indenture of supplemental mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust hereinbefore set forth, and dated June 21, 1858, and did convey to said Barnes, as trustee as aforesaid, in addition to the things in said first mortgage conveyed, the following, that is to say: All and singular the rights, privileges, liberties, and franchises of said company of every kind and description; and also all lands granted or intended to be granted to said company under and by virtue of the act of Congress, and the act of the legislature of the State of Wisconsin, in said supplementary mortgage

mentioned, and also all the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate therein conveyed or intended to be conveyed; and also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action, of whatsoever nature which might be owned, or in which said company might have an interest on such day as such company might first make default in the payment of the interest or principal or any part thereof, which might thereafter become due on any of the said bonds issued or to be issued by said company, and to secure which said mortgage was given. That immediately thereafter the said Barnes caused said supplementary mortgage to be recorded, as, in the same offices as the said first-named deed of trust or mortgage to said Barnes was recorded, as hereinbefore set forth; a copy of which said first mortgage or deed of trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes, are attached hereto, and marked respectively Exhibit No. 1 and Exhibit No. 2.

That immediately thereafter said company commenced to deliver the said last-named bonds, so secured as aforesaid, in payment of the indebtedness of said company, and for other purposes contemplated by said company in the issue thereof, and in the necessary and proper business of said company, and that all of said bonds were sold, and delivered in payment, and transferred by said company for the purposes, and in the manner contemplated as aforesaid by said company, and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons against said company for materials furnished to, and services rendered for said company, and that large numbers of said bonds are now held by such persons in the said State, or have been by them turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter stated, and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York, and that all of said bonds are now held by bona fide purchasers and owners, or have by them been turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter mentioned. That about the 1st of February, A. D. 1859, the said company having made default in the payment of, or part of, the interest due on said bonds secured as aforesaid, the said William Barnes in pursuance of the provisions of the laws of the State of Wisconsin then in force in that behalf, and the provisions contained in said mortgages or deeds of trust, proceeded to the foreclosure of said mortgages by advertisement, and having previously given the notice required by law in that behalf, on the 21st day of May, A. D. 1859, said William Barnes, trustee, sold at public auction at the court-house in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mortgage to him said Barnes described; and the said William Barnes, trustee, then and there at said sale became the purchaser thereof according to the provisions of the laws of said

State of Wisconsin, then in force in that behalf, at, and for the sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, ($1,593,333 33;) no other person or body having made any bid whatever for the same, and that said mortgages thus became, and were thereby, foreclosed according to the provisions of the laws of the State of Wisconsin, in that behalf then in force. And that said Barnes, by virtue of said purchase, and the provision of the law of the State of Wisconsin then in force in that behalf, became the owner of the property and franchises and other things so purchased by him, and thereafter held the same in trust, and only in trust, for the holders of the then outstanding bonds secured by said mortgages.

And that afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and bona fide holders of a large majority of the said bonds proceeeded to organize anew, and then and there elected directors, and took the corporate name, "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last-named company all the property and things by him purchased as aforesaid, and thereafter said company proceeded, and conducted its business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company; and thereby became, and ever since has continued, a corporation under and by virtue of the laws of said State, capable of suing and being sued; and that said Milwaukee and Minnesota Railroad Company immediately there after entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company, so far as the same were in possession of said La Crosse and Milwaukee Railroad Company at the time of said sale.

That said bond holders, at said new organization, elected and chose the following named persons directors of said Milwaukee and Minnesota Railroad Company, viz:

Russell Sage, N. J. Emmons, Hans Crocker, William E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William R. Sill, and —— Battershall, and that said directors immediately thereafter organized the said board of directors by electing and choosing Russell Sage president, N. J. Emmonds vice-president, and Dwight W. Keyes secretary, of said Milwaukee and Minnesota Railroad Company; and that neither the La Crosse and Milwaukee Railroad Company, nor any sbusequent encumbrancer or encumbrancers, nor any other person or persons, did, within one year after said sale, redeem or offer to redeem the property and things so sold under said mortgages or trust deeds according to law in that behalf.

That by virtue of the said foreclosure of said deeds of trust or mortgages to said Barnes as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company and conveyance by said Barnes as hereinbefore set forth, and the said premises not having been redeemed, as hereinbefore stated, the said Milwaukee and Minnesota Railroad Company, from and after May 21, 1860, became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company, as to all the

property and things described in said deeds, and the owner of, and clothed with all the rights, privileges, franchises, and property, real and personal, and things in action, and effects of every nature and description before then belonging to the La Crosse and Milwaukee Railroad Company, wherever situated and however circumstanced, subject only to such valid and legal liens and encumbrances thereon as were prior to said first deed to said Barnes; and that the said Milwaukee and Minnesota Railroad Company, being by law an incorporated company, composed of the creditors of the said La Crosse and Milwaukee Railroad Company, and purchasers at said foreclosure sale, (in the manner hereinbefore stated,) as corporators, has a legal right to object to, resist, and set aside all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments which were or have been made or suffered by said La Crosse and Milwaukee Railroad Company with intent to hinder, delay, or defraud its creditors; and has the right to object to, resist, and set aside every illegal, unjust, or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company which is apparently a lien or encumbrance upon any of the property, rights, privileges, franchises, or other things whatsoever of said last-named company, which were embraced or described or intended to be embraced or described in either of said trust deeds to said Barnes, and now owned by said Milwaukee and Minnesota Railroad Company, as hereinbefore stated; and has the right to collect and enforce all actions, and causes of action, existing in favor of said La Crosse and Milwaukee Railroad Company and conveyed by said trust deeds to said Barnes or either of them.

82 Your orator further shows that the said La Crosse and Milwaukee Railroad Company heretofore, to wit, on and before the 26th day of September, A. D. 1857, was greatly embarrassed, and in failing circumstances; that some of the creditors of said company had before that time commenced suits against said company, and others of its creditors were threatening to do so, and the said company was at that time unable to pay its debts, and prosecute the construction of its said railroad, which was then only completed and in operation from the city of Milwaukee to or near New Lisbon in said district, and that the said company then and there designing and intending to hinder, delay, and defraud its creditors, and to hold its creditors at defiance, and apply its revenue and means to the completion of its said road, did pretend to make, and in form did make, execute, and deliver to said Selah Chamberlain a pretended deed or lease, a copy of which is hereto attached, and marked Exhibit No. 3, and hereby made a part of this bill of complaint.

And your orator further shows that after the making and delivery of said last-named deed or lease to the said Chamberlain as aforesaid, to wit, on the day and year last aforesaid, the said Chamberlain entered into possession of all the property, franchises, and other things mentioned and described in said deed or lease.

Your orator further shows that the said La Crosse and Milwaukee Railroad Company had no legal right or competent authority to make

or deliver said deed or lease; that the making and delivery thereof were acts beyond the corporate powers of said company, and were therefore of none effect and void; and that the same were and are void as to all creditors of said company, and as to your orator, for the further reason that the said deed or lease was made, executed, and delivered by said company with the intent and design on the part of said company and on the part of its board of directors to thereby hinder, delay, and defraud its creditors, and particularly Vose, Livingston & Co., creditors of said company, and with intent to hinder and delay said Vose, Livingston & Co. from asserting their just claim and demand in regard to certain railroad iron of great value, to wit, the sum of
83 one hundred thousand dollars and upwards, which intentions and designs of said company were well known to said Chamberlain when said deed or lease was delivered to and accepted by him; and that said Chamberlain accepted said deed or lease, and entered into possession as aforesaid for the purpose of aiding and abetting said company in its said unlawful and fraudulent intents and designs, and well knowing the said company had no legal authority to make and deliver said deed or lease to him for the uses and purposes therein set forth and declared.

And your orator further shows that afterwards, to wit, on the 2d day of October, A. D. 1857, the said La Crosse and Milwaukee Railroad Company and the said Chamberlain, fearing and being advised by the counsel of said Chamberlain that there was some doubt as to whether the said fraudulent purposes, designs, and intentions of the said company and the said Chamberlain could be accomplished under and by said deed and lease, and that there was some doubt whether said deed or lease would prevent said Vose, Livingston & Co. from enforcing their just demand and claim aforesaid, did on that day further combine and confederate together to hinder, delay, and defraud the creditors of the said company, and to hinder, delay, and defraud said Vose, Livingston & Co., and prevent them from asserting their claims and enforcing their rights in regard to said railroad iron; and did then and there agree that said company should, and said company then and there did, to wit, at Milwaukee in the said district, on said 2d day of October, 1857, confess and suffer a judgment against it, and in favor of said Chamberlain, in the district court of the United States for the district of Wisconsin, without service of process or suit brought, for the sum of six hundred twenty-nine thousand and eighty-nine dollars and seventy-two cents damages, and fifteen dollars and fifty cents costs, which said last-named judgment was in form duly confessed, entered, and docketed in said court, but that said company, when it confessed and suffered said judgment to pass as aforesaid, was not indebted to the said Chamberlain, and did not owe to said Chamberlain any amount whatever; that no consideration or value was ever received by, or ever accrued to, said com-
84 pany on account of said judgment, and that there was no consideration whatever for said judgment; and that said judgment was only confessed by said company in pursuance of said unlawful combination and confederacy between said company and said Cham-

berlain, and for the purpose of bolstering up said fraudulent deed or lease, and for the purpose, and with the intent and design on the part of said company, and its board of directors and said Chamberlain, to thereby hinder, delay, and defraud the creditors of said company, and particularly Vose, Livingston & Co., and to apply the then future earnings of said railroad to the completion thereof in defiance of the just claims and demands of the creditors of said company.

Your orator further shows that the said deed or lease, until set aside as hereinafter stated, operated to greatly embarrass and unreasonably to hinder, delay, and defraud the creditors of said company in the enforcement of their just claims and demands against said company, and created and continued trusts for the benefit of said company to an unlimited amount, and enabled said company, through said Chamberlain as its pretended lessee, to carry on and prosecute its business for its own benefit, and in defiance of its creditors, and enabled said company to enjoy and receive benefits and advantages from its said property, while its creditors were thereby unreasonably hindered, delayed, and prevented from enforcing collection of their just debts against said company out of said property and things conveyed in said lease, and the rents, revenues, income, and tolls arising therefrom, and the use and operation thereof; and that for these reasons the said deed or lease to said Chamberlain, and said judgment confessed in aid of, and to bolster up said lease, were ever void in law, without regard to the intentions and designs with which, in fact, said lease was given, and said judgment confessed as hereinbefore stated.

Your orator further shows that while said Chamberlain was in possession of said road and other things, under said deed or lease, and after the confessing and docketing of said judgment in his favor in fraud as aforesaid, to wit, on the 3d day of October, A. D. 1857, one Newcomb Cleveland recovered judgment against said La
85 Crosse & Milwaukee Railroad Company, in the said district court of the United States for the district of Wisconsin, for the sum of one hundred and eleven thousand seven hundred dollars and seventy-one cents damages and costs; and that afterwards said Cleveland caused a writ of fieri facias to be issued on said judgment, and delivered to the marshal of said district in due form of law, who afterwards levied the same upon the property described in and conveyed by said law; and that afterwards, on the 31st day of October, A. D. 1857, said Cleveland exhibited, on the equity side of said district court, his bill of complaint against said La Crosse & Milwaukee Railroad Company and Selah Chamberlain and others, defendants, a copy of which last-named bill of complaint, through the stating part thereof, is hereto attached, and marked Exhibit No. 4; and said Cleveland, in and by his said bill of complaint, prayed the decree of said court thereon, and that the said pretended lease to said Chamberlain might be cancelled, and that said judgment confessed as aforesaid in favor of said Chamberlain might be reversed and utterly held for naught, and that said Chamberlain, and all persons for him or claiming through or under him, might be enjoined

from setting up any claim or right under said judgment; and said bill contained prayer for other and for general relief in the usual and proper form. That upon said bill subpœna was duly issued and personally served upon both said La Crosse & Milwaukee Railroad Company and said Selah Chamberlain before the 3d day of November, A. D. 1857; and that both said Chamberlain and said last-named company appeared in said suit in equity in favor of said Cleveland, and put in their answers, separately, to the said bill of complaint, a copy of which answer thereto by said Chamberlain is hereto attached, and marked Exhibit No. 5, and made part of this bill of complaint; and that said Cleveland, on the 6th day of March, A. D. 1858, took issue upon said answer of said company, and upon the answer of said Chamberlain, by filing replication thereto; and that thereupon in that suit testimony was taken upon the several issues thus made, and that after a full hearing on the merits in said suit, and upon the precise issues raised therein as to the validity of said lease
86 and judgment to said Chamberlain, the said district court in equity in said cause made and enrolled its decree therein, a copy of which is hereto attached, marked Exhibit No. 6, and which said Exhibit No. 6 is hereby made a part of this bill of complaint.

Your orator further shows that the said Selah Chamberlain, after the rendition and enrolment of said decree in the said district court as hereinbefore stated, took an appeal on or about the 14th day of February, A. D. 1859, from said decree to the Supreme Court of the United States of America, which appeal was afterwards pending in said Supreme Court until on or about the first day of February, A. D. 1862, when the same was dismissed by said Supreme Court; and that said Chamberlain ever after the rendition and enrolment of said decree in said district court, until on or about the 18th day of May, A. D. 1860, continued in full possession of the railroad, rolling stock, and franchises mentioned in and conveyed by said lease or deed to said Chamberlain, and in the receipt of all the rents, revenues, income, and tolls thereof.

Your orator further shows that on the 1st day of September, A. D. 1859, there became due and payable as interest on a certain mortgage made and delivered by said La Crosse and Milwaukee Railroad Company to Green C. Bronson and James T. Soutter, trustees, to secure bonds to the amount of one million of dollars, (which last-named mortgage conveyed the railroad of said last-named company from Milwaukee to Portage City, together with the rolling stock and franchises of said company pertaining thereto,) the sum of forty thousand dollars, which mortgage was the same that is in said lease or deed to said Chamberlain, described as follows: "4th. To the payment of all coupons hereafter to become due on one million of dollars of the bonds of said railroad company secured by mortgage or deed of trust on the railroad of said company from Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of , A. D. 1857." And that the said Chamberlain was, on the said 1st day of September, A. D. 1859, still in possession as aforesaid, and had in his hands, derived from the revenues, rents, and tolls

87 of said railroad, rolling stock, and franchises conveyed by his said lease, a sum of money much larger than the amount of said interest so due on that day as aforesaid, and which by the terms of said lease or deed to said Chamberlain was applicable thereto, and with which the said Chamberlain was bound, by the terms and conditions of said lease, to pay and satisfy the said interest due as aforesaid, but that said Chamberlain omitted to pay the same or any part thereof; and that afterwards, to wit, on the 9th day of December, A. D. 1859, the said Bronson and said Soutter commenced in the district court for said district of Wisconsin in equity a suit against the La Crosse and Milwaukee Railroad Company, said Chamberlain, and your orator, and others, defendants, to foreclose the said mortgage for the non-payment of said forty thousand dollars interest thereon due as aforesaid. And that afterwards, to wit, on the first day of March, A. D. 1860, the further sum of forty thousand dollars became due as interest on said mortgage while said Chamberlain was in possession as aforesaid. And that afterwards, to wit, on the 18th day of May, A. D. 1860, while said foreclosure suit was still pending, and while the said Chamberlain had in his hands over one hundred thousand dollars of the revenues, rents, and tolls of said railroad, rolling stock, and franchises conveyed by said lease or deed to him, and from which, by the terms of said lease or deed, the said Chamberlain was bound and ought to have paid the whole amount of interest which had so become due on said mortgage as aforesaid, and all costs and expenses of the said Bronson and said Soutter in and about said foreclosure suit, the said Selah Chamberlain knowing that said lease and judgment to him had been cancelled, vacated, set aside, and made naught, voluntarily abandoned and surrendered the said railroad, rolling stock, and franchises, and other property and things in and by said lease pretended to be conveyed to him as aforesaid to the said Bronson and the said Soutter as mortgagees as aforesaid; and thus, and then and there, voluntarily waived, abandoned, and surrendered all right or claim to the possession of said railroad, rolling stock, franchises, and other things mentioned and described in said lease, and pretended to be conveyed thereby to him, said Chamberlain, and thus and thereby the

88 said Chamberlain, as your orator is advised and insists, estopped himself to ever thereafter set up any claim of right under said lease, or claim to the possession of said railroad, rolling stock, franchises, and other things described in and pretended to be by said lease conveyed to him, said Chamberlain, he having voluntarily elected to retain the said money with which, by the terms of said lease, he ought to have paid the said interest so due as aforesaid, and surrender the said railroad, rolling stock, franchises, and other things by said lease pretended to be conveyed to him as aforesaid.

Your orator further shows that notwithstanding the rendition and enrolment of the said decree in the said Cleveland suit, as hereinbefore stated, which decree remaining and is in full force, unreversed, and unannulled, and of record in the said district court, or in this court; and notwithstanding the voluntary abandonment of the possession of the said railroad, rolling stock, franchises, and other things

described in and pretended to be conveyed by said lease to said Chamberlain, as hereinbefore stated and set forth, he, the said Chamberlain, fraudulently claims and pretends, and gives out in speeches to the public, that said lease and said judgment to him are in full force, that said lease has not been cancelled, annulled, and set aside, and that said judgment so confessed to him as aforesaid has not been set aside, vacated, and made naught, and that both said lease and said judgment are now in full force, and that he, said Chamberlain, is entitled to take possession of said railroad, rolling stock, and franchises described in and pretended to be by said lease conveyed, as against your orator.

Your orator further shows that said judgment so confessed to said Chamberlain still appears upon the record thereof to be valid and in force, notwithstanding it has been in fact vacated as hereinbefore stated; and that the said Chamberlain is thus enabled to injure your orator and present a certified transcript of said judgment as a valid judgment; and the said lease or deed to said Chamberlain is still in his possession and remains of record where the same was re-
89 corded in the office of the secretary of state of the State of Wisconsin, and that both said lease and judgment are a cloud upon the rights of your orator, and enable the said Chamberlain to injure and defraud your orator, and pretend that the same are encumbrances on the railroad, rolling stock, franchises, and other property and things belonging to your orator.

To the end, therefore, that the said Selah Chamberlain may, if he can, show why your orator should not have the relief hereby prayed for, and may, but not upon his oath, (the answer of the said Selah Chamberlain hereto upon oath being hereby expressly waived,) answer all the matters and things aforesaid.

And that the said Chamberlain may be, by the order and decree of this court, perpetually enjoined from setting up or pretending any right or claim as against your orator under said lease or deed to him hereinbefore set forth, or under or by virtue of the said judgment so confessed to him, as hereinbefore set forth; and that the said Chamberlain may be ordered and decreed to deliver up said lease to be cancelled, and may be ordered and decreed to acknowledge satisfaction of said judgment upon the record thereof, so as to remove all appearance of the existence of said lease and judgment; and that your orator may have such other or further relief as the nature of its case may require and as shall be agreeable to equity and good conscience.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this court, to be directed to the said Selah Chamberlain, commanding him, by a certain day and under a certain penalty therein to be inserted, to be and appear before the circuit court of the United States for the district of Wisconsin, in equity, at the city of Milwaukee, in said district, and then and there to answer the premises, and further to stand to and abide

such order and decree therein as shall be agreeable to equity and good conscience.

And your orator shall ever pray, &c.

MATT. H. CARPENTER,
Sol. for Compluinant.
MATT. H. CARPENTER,
Of Counsel for the Complainant.

90 *Barnes mortgage.—Exhibit No.* 1.—*Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee, as hereinafter mentioned, party of the second part.

Whereas the said railroad company for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each; fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the folowing form, to wit:

UNITED STATES OF AMERICA.

No. . *State of Wisconsin.* $.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof in the sum of dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank in the city of Albany, semi-annually, on the first day of January, and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making, in the aggregate, the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany, and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in progress of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is
91 hereby had and made for a more full description of its contents. And for further securing and providing for the pay-

ment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

——— ———, *President.*

——— ———, *Secretary.*

Registered and countersigned this 185 .

——— ———, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are, or hereafter may be, or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroad. And also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made, or to be built or made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils and other personal property which have been or may hereafter be procured for or
92 used in connection with said railroad; and also all and singular the rights, liberties, and privileges and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to

these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin; subject, nevertheless, to liens already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company, to the amount of about nine hundred and twenty-two thousand dollars. Also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars. Also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars. Also subject to a mortgage of four million dollars upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed:

First. Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad with all the equipments and other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or
93 agents, to enter into and upon and take possession of all and singular the railroad, and all the other property, real and personal, hereinbefore conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or

purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, and to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given.

And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor that said company will, from time to time during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to the said trustee all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist, or may hereafter arise, or be imposed upon the property hereby conveyed, or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust
94 shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will re-convey to said railroad company all this right, title, and interest of, in and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, and expenses and compensation of the trustee in, about, or for the execution of the trust, and will in all things keep him fully

identified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars; with such sum, as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds secured by this deed of trust, at the lowest price he can purchase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: *Provided*, such resignation, after reasonable notice to the president or secretary of said railroad
95 company, shall be approved by said supreme court. And on the death, removal or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee, and had executed this deed.

Eleventh. Said trustee hereby accepts, and covenants and agrees to and with said railroad company faithfully to execute, said trust.

In witness whereof said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its presi-

dent and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse & Milwaukee Railroad Company—

[SEAL.] By N. P. STANTON, *President.*

LOCKWOOD L. DOTY,

Secretary of La Crosse & Milwaukee Railroad Company.

[SEAL.] WILLIAM BARNES, *Trustee.*

Signed, sealed, executed, and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee.

CLARK, B.
J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P.
96 Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,

Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deed or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him as one of the parties thereto and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment, is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person
97 described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal.

[SEAL.] E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.
REC. 418-19—6

Exhibit No. 2.

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part:

Whereas the Congress of the United States, by an act approved June 3, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers for six sections in width on each side of said roads respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be ap-
98 pointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold, and which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be, and the same are hereby, reserved to the United States from the

operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land, which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands, when sold, nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted.* That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other, and the said railroads shall be and remain public highways, for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say: that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold, and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed;
99 and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said road under the direction of the Post Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same.

Approved June 3d, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11th, 1856, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, to execute the trust created by an act of Congress, entitled, 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856." The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads, with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City to the St. Croix river or lake, between townships twenty-

completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State re-
102 quired to pay in place of taxes upon its road now constructed or which it may hereafter construct, under the present charter, and in condition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road, to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company, and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company and to examine under oath the officers, agents, and employees of said company and other persons, and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company.

The first payment shall be made on the first day of March next after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made, and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village or other municipal authority in the State, (except special taxes for the im-

provement of streets and side walks,) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed held by said company, and necessary for the operation of said railroad; and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the
103 State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited quantities at fair prices, preference being given to actual settlers.

SEC. 8. That said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other watercraft on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build, and own such vessels, boats, barges, and other water craft as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of all their right, title, claim, or demand of, in, or to any lands, or interest in lands granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad, which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy, and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth, such payment to be made in money, bonds,

stock, or lands, or in such other manner as said companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, 104 and in case they cannot agree upon such third person, the governor shall appoint such third person; and the three persons so selected shall constitute a board of commissioners, whose duty it shall be to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11. This act and all grants herein contained shall cease and be void, unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12: All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so appropriate, take, possess, hold, or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two millions of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary pro rata from each of

the several subscriptions; and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

105 SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall, from time to time, operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of the last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state;

And whereas the said railroad company for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined, before the date of the indenture hereinafter mentioned, dated June 21, 1858, between said company of the first part, and said Barnes, as trustee, of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached;

And whereas, also, the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear;

And whereas also the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee
106 Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances;

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises therein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty eight (268) miles, and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R. Co. by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute, or be a part of or appertain to, said railroads, and including also all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter.

107 And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents, to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated, and duly conveyed, and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above-described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal,
108 and mixed now vested or required, or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises above conveyed, or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the

first part, and against all and every other person or persons, estates or corporations lawfully claiming or to claim the same or any part thereof, subject nevertheless to all legal liens already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed; and also expressed in the said indenture, made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of all and singular the railroads and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profit thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, or interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week, for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin the same shall be given. And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money men-

109

tioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted, and agreed by the said railroad company that the provision herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions of omissions to act under this indenture, in the same manner as if all the provision thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse and Milwaukee Railroad Company—

[SEAL.] By N. P. STANTON, *President.*

LOCKWOOD L. DOTY, *Secretary.*

[SEAL.] WILLIAM BARNES, *Trustee.*

Signed, sealed, executed, and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president.

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence, as to William Barnes, the said trustee.

JOHN C. WHITE.
ISAAC EDWARDS.

111 STATE OF WISCONSIN. *County of Milwaukee, ss:*

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me, personally appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me, personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

112 In testimony whereof I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify the person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

113 *Exhibit No.* 3.

LEASE.

The La Crosse and Milwaukee Railroad Company to Selah Chamberlain:

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, party of the second part, at the city of Milwaukee and State of Wisconsin, the twenty-sixth day of September, in the year of our Lord one *one* thousand eight hundred and fifty-seven.

The said party of the first part, in consideration of the undertakings and agreements of the said party of the second part hereinafter contained, hereby sells and conveys to the said party of the second part all its personal property of every name, kind, and description in the State of Wisconsin, except all such personal property as is used in and is appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto so soon as the same can be conveniently done.

And the said party of the first part in consideration of the said undertakings and agreements of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the thirtieth day of September, in the year 1857, for an indefinite term of time, to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City to the city of La Crosse, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances and franchises connected therewith or belonging or incident thereto, subject only to such prior superior liens as may or do exist thereon, and all existing contracts or agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part shall, from and after the said thirtieth day of September, and until this agreement shall be terminated in the manner hereinafter provided, operate so much of the said railroad as is ready for operation, and from time to time such portions of the same as shall be made ready for operation in such manner as will produce the largest amount of net receipts. That the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair, and that the said party of the second part shall receive and appropriate, in the manner hereinafter provided, all the receipts or income to be derived from the operation of said railroad.

It is further mutually agreed that the said party of the second part may, if it shall be found for the interest of said company, buy additional rolling stock, and appropriate the receipts of said railroad to the payment of the same.

The said party of the second part hereby undertakes and agrees that he will defray all the current costs and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the cost and expenses of operating the said railroad, and that he will, by the 15th day of every month, make out and deliver to said party of the first part a correct statement exhibiting the total receipts and income of said railroad from all sources during the next preceding month; also the cost and expenses during such month of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and the cost and expenses of operating said railroad; and also exhibiting the net receipts from said railroad, after deducting such costs and expenses of rolling stock and repairs, and of operating, and that he will at any time, on demand of said company or its president or secretary, furnish to the person demanding the same a statement in detail of the items of which such statement is composed, and any officer or agent of said company, authorized by said company to do so, shall at any time have the right to examine the accounts of said party of the second part, relating to the repairs of said railroad and rolling stock, and to the operating of said railroad.

And the said party of the second part further undertakes and agrees that the said net receipts, after deducting the cost and expenses of repairs and operating as exhibited by the said monthly statements as aforesaid, shall be appropriated by him in the manner following, to wit:

1. To the payment of all coupons hereinafter to become due upon nine hundred and fifty thousand dollars of the bonds of said company, secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage City, bearing date June 13th, A. D. 1854, together with the sinking fund provided for by a supplemental mortgage or deed of trust, bearing date Feb. 18, 1856, except such of said coupons as are payable November 1st, 1857, and the sinking fund of twelve thousand dollars, payable November 1st, 1857.

2. To the payment of all coupons hereafter to become due on one hundred and fourteen thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date on the 1st day of September, A. D. 1853.

3. To the payment of all coupons hereafter to become due on two hundred thousand dollars of the bonds of the city of Milwaukee, issued to the La Crosse and Milwaukee Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date the 30th day of July, A. D. 1854.

114 4. To the payment of all coupons hereafter to become due

on one million of dollars of the bonds of the said railroad company, secured by mortgage or deed of trust on the railroad of said company from Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of , A. D. 1857.

5. Whatever balance of said net receipts as aforesaid shall remain after the payment of the said coupons and sinking fund, shall be applied by said party of the second part in payment of the amount due, or hereafter to become due, to him by virtue either of a certain contract between said parties dated January twentieth, 1857, a supplemental contract between said parties dated April 30th, 1857, or a certain contract between said parties dated November 20th, 1856, or of a contract modifying said contract entered into between the said parties simultaneously with this contract, except such as may become due for work which shall be hereafter done between New Lisbon and La Crosse, which is to be paid for from the means of the said company other than the same income.

And the said party of the second part further undertakes and agrees that whenever he shall have received from the earnings of the said railroad such sum as by the terms and conditions of the aforesaid contract for the construction of the said railroad, bearing date, respectively, November 20th, 1856, January 20th, 1857, April 30th, 1857, and the one entered into simultaneously herewith, he is or shall be entitled to receive, or whenever at any time the said party of the first part shall pay to him any balance which at such time he shall be entitled to receive according to the terms and conditions of the said contract, that he will surrender up to the said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appertaining thereto, in good repair, together with all estate, rights, privileges, franchises, and appurtenances connected therewith, or belonging or incidental thereto, including all the railroad buildings, tenements, fixtures, and appurtenances constructed, and all rolling stock and other personal property put upon said road by said party of the second part by virtue of this contract, and that he will reconvey and deliver to said party of the first part all personal property hereby conveyed which shall not have been worn out, destroyed, or consumed in the construction or operation of the said railroad, and that he will convey and deliver to said party of the first part all personal property which shall have been acquired for said railroad in pursuance of this contract, or with the means derived from the receipts from said railroad, and that he will, at such time, deliver on the line of said railroad, to said party of the first part, fifteen thousand cords of wood, and that whenever the said party of the second part shall have received as aforesaid such sum as he shall be entitled to as aforesaid, or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void.

In witness whereof the said party of the first part hath caused these presents to be signed by its president and secretary, and its

corporate seal to be hereunto affixed, and the same are signed by the said party of the second part.

La Crosse and Milwaukee Railroad Company—

(Signed) By BYRON KILBOURN, *President.*

[L. S.] JACKSON HADLEY, *Secretary.*

[L. S.] S. CHAMBERLAIN.

Signed, sealed, and delivered in the presence of—

H. L. PALMER.

THOMAS W. BEAVER.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Be it remembered, that on this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, before the subscriber, a notary public, residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who being by me duly sworn, said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common and corporate seal of said company, and was affixed thereto by their authority; and that he as president, and Jackson Hadley, as secretary, subscribed their names thereto by like authority; and on the same day, before me, personally appeared Selah Chamberlain, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same freely for the uses and purposes therein mentioned.

(Signed) H. L. PALMER,

Notary Public, Milwaukee County.

115 *Exhibit No. 4.—Bill of complaint.*

To the judge of the district court of the United States for the district of Wisconsin, in equity:

Newcomb Cleveland, of the State of Illinois, and a citizen of said State of Illinois, brings this his bill against the La Crosse and Milwaukee Railroad Company, a corporate body created and existing by and under the laws of the State of Wisconsin, and Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, citizens of the State of Wisconsin, and Selah Chamberlain, of the State of Ohio, and a citizen of the State of Ohio, defendants.

And thereupon your orator complains and says, that heretofore, to wit, on the 7th day of October, A. D. 1857, in the district court of the United States for the district of Wisconsin, by the consideration and judgment of said court, your orator recovered against the said La Crosse & Milwaukee Railroad Company the sum of one hundred twelve thousand two hundred and seventy-one dollars and seventy-six cents, for the damages which he had sustained, as well by the breaches of the said company defendant's several covenants to and with your orator, as for the costs and charges of your orator by him about his suit in that behalf expended, which were adjudged to your orator in

and by said court, whereof the said company, defendant, was convicted on the day and year last aforesaid, as by the record of said judgment in the office of the clerk of said court (reference being thereto had, and to which for greater certainty your orator prays leave to refer,) will more fully and at large appear.

And your orator further shows unto your honor that said judgment, so recovered as aforesaid, remaining in full force and unpaid, and the whole amount thereof remaining unpaid and unsatisfied, your orator, on or about the 22d day of October, A. D. 1857, for the purpose of obtaining satisfaction of said judgment sued and prosecuted out of the said district court a writ called a writ of fieri facias, directed to the marshal of said district of Wisconsin, by which said
116 writ the said marshal was commanded that of the goods and chattels of the said La Crosse and Milwaukee Railroad Company, defendant, in his district, he should cause to be made the sum aforesaid, recovered as aforesaid by your orator; and that if sufficient goods and chattels could not be found, then to cause the said amount to be made of the lands and tenements of said company, defendant, which it had at the time of docketing said judgment, to wit, on the 7th day of October, A. D. 1857, or at any time thereafter, and was afterwards, to wit, on the 22d day of October, A. D. 1857, delivered to the said marshal to be executed in due form of law; and that afterwards, to wit, on or about the 27th day of October, A. D. 1857, the said marshal levied said writ of fieri facias upon the following described property, to wit, at the city of Milwaukee, in said district, that is to say:

The La Crosse and Milwaukee railroad, and all the interest of the La Crosse and Milwaukee Railroad Company therein, with all the franchises, rights, and privileges thereunto belonging and appertaining, including roads, roadways, rights of way, and real estate of every description, road beds, tracks, ties, rails, station-houses, and buildings, and ground, sheds and grounds, engine-houses and grounds, shops and grounds, water-houses and grounds, cars and appurtenances, locomotive engines and appurtenances, more particularly described as follows, viz: One passenger depot, one storehouse, two freight depots, grain platform and sheds, blacksmith shop, three tank houses, machine-shop, stationary engine-house, paint shop, lumber-house, coppersmith shop, iron-house, blacksmith shop, turn-table, circular engine-house, car-shop, all in the city of Milwaukee; tank-house on section 12 of said railroad; one ditto, on section 22; passenger and freight depot at Richfield; one turn-table and passenger and freight depot at Schleissengerville; engine-house, tank-house, and passenger and freight depot at Hartford; passenger and freight depot at Rubicon; passenger and freight depot and tank-house at Woodland; ditto, at Iron Ridge; turn-table, passenger and freight depot, engine-house, and tank-house at Horicon; passenger and freight depot at Junction; ditto at Rolling Prairie; turn-table, engine-house, tank-house, and passenger and freight depot at Beaver Dam; passenger and freight depot and tank-house at Fox Lake; passenger and freight depot at Cambria; passenger and

freight depot, turn-table, tank-house, and engine-house at Midland; passenger and freight depot, turn-table, engine-house, and tank-house at Portage City; together with the grounds upon which such houses and buildings are situated, and which are appurtenant thereto; 21 locomotive engines, 10 first-class passenger cars, 2 second-class ditto, 4 baggage cars, 164 house freight cars, 120 platform cars, 30 gravel cars, and 17 hand cars Also all that portion of the La Crosse and Milwaukee railroad known as the Watertown division of said railroad, and all the interest of the said La Crosse and Milwaukee Railroad Company therein, with all the franchises, rights, and privileges thereunto appertaining, including roads, roadways, rights of way, and real estate of every description, road beds, tracks,
117 ties, rails, station-houses, buildings, and grounds, shops and grounds, water-houses and grounds, engine-houses and grounds, cars and appurtenances, locomotives and appurtenances; also about 45,000 bars of railroad iron, more particularly described as follows, viz: one engine-house in the city of Milwaukee; one station-house at the Junction; one ditto and wood-shed at Pewaukie; one station-house at Hartland; one ditto at Pine Lake station; one water-house, one wood-sued, and one station-house at Oconomowoc; one station-house, frame shed, machine shop, car shop, blacksmith shop, two water-houses, engine-house, and wood shed at Watertown; station-house and water-house at Lowell; station-house, engine, and water-house at Columbus; together with the grounds upon which such houses and buildings are situated, or which are appurtenant thereto; 7 locomotive engines, 67 box cars, 35 rack cars, 10 hand cars, 4 passenger cars, and 2 baggage cars, 20 dump cars, about 42,612 bars of railroad iron, lying piled on lots in blocks 40 and 41 in the 2d ward in the city of Milwaukee; also. lots 9, 10, and 11, in block 3, and lots 1, 2, and 3, in block 47, in the 5th ward of the city of Milwaukee; lots 1 and 4, in block 156; lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, in block 155; $\frac{1}{3}$ of block 157, except lot 8, and the bayou adjoining said block; $\frac{1}{3}$ of lots 8, 9, and 10; all of lots 12, 13, and 14; $\frac{1}{3}$ of lots 16 and 17; and E. half of 15, in block 158, in the 4th ward of the city of Milwaukee. All of which said property was then and there, to wit, at the time of said levy, situated in said district of Wisconsin, and was the property, goods, chattels, rights, franchises, lands, and property of the said La Crosse Railroad Company, subject to levy of execution, or fieri facias, in manner and form as aforesaid; and all of which said property the said marshal, afterwards, to wit, on the 30th day of October, A. D. 1857, advertised for sale, at public auction, according to law, to satisfy said writ, to wit, on the 15th day of December, A. D. 1857, at the said marshal's office, in the said city of Milwaukee, in said district, at the hour of 10 o'clock a. m., of that day, as the law in that behalf requires, as by the said writ of fieri facias, and the direction and certificate of said marshal thereon indorsed, and now in the hands of said marshal, will more fully appear, and to which, or a copy thereof, your orator prays leave to refer.

And your orator further shows that the whole of said judgment yet remains unpaid and unsatisfied, and that said judgment remains in

full force, unreversed and unannulled, and that no part of the said judgment has been paid to your orator, but that to pay the same the said defendant company ever has and still does neglect and refuse; and your orator shows that there is now equitably and actually due to your orator on said judgment the sum of one hundred and twelve thousand two hundred and seventy-one dollars and seventy-six cents, together with interest on the sum of one hundred eleven thousand seven hundred and twenty-seven dollars and seventy-one cents thereof, from the day of the rendition of said judgment as aforesaid,
118 over and above all just claims of the said the La Crosse and Milwaukee Railroad Company, defendant, by way of offset or otherwise, and that this bill is not exhibited by collusion with the said the La Crosse and Milwaukee Railroad Company, nor for the purpose of protecting the property, rights, or effects of said company, defendant, nor any part thereof, against the claims of other creditors, but for the sole purpose of obtaining the relief hereinafter prayed.

And your orator further shows that the said La Crosse and Milwaukee Railroad Company, defendant, at Milwaukee, in said district heretofore, to wit, on the 26th day of September, A. D. 1857, designing and intending to injure, delay, cheat, and defraud the creditors of said company, and to injury, delay, cheat, hinder, and defraud your orator of his just debt and damages against said company, did pretend to make, and in form did make, seal, execute, and deliver to one Selah Chamberlain (whom your orator prays may be made a defendant to this bill) a pretended lease, in and by which said lease, dated the day and year last aforesaid, the said La Crosse and Milwaukee railroad pretended to, and did express, that it, said company, did sell and convey to said Selah all its personal property of every name, kind, and description in the State, district of Wisconsin, except all such personal property as was then used in and was then appurtenant to the operation of what is known and called the Watertown division of the La Crosse and Milwaukee railroad, and did pretend to and in said lease did express that it, said company, did let and lease to said Selah, from and after the 30th day of September, A. D. 1857, for an indefinite term of time, to be determined in the manner thereinafter specified, its, said company's, entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its, said company's, rights of way, depot grounds, and all buildings, tenements, and fixtures of whatever kind or description, connected therewith, or appurtenant thereto, together with all estate, rights, privileges, and appurtenances and franchise connected therewith, or belonging or incident thereto, subject only to such prior or superior liens as might or did exist thereon, and all their existing contracts and agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad, which said pretended lease contained many covenants and agreements between said company and said Selah, intended, as your orator is informed and believes and therefore says, to make said lease look and seem more specious and circumstantial, and to cover still deeper the fraudulent design of said company in making said lease.

And your orator further shows to the court that after the making and delivery to said Selah of said lease, as aforesaid, to wit on the day and year last aforesaid, the said Selah entered into possession of all the property, rights, privileges, and franchises described, enumerated, and mentioned in said lease, and ever since has taken and received, and is now taking and receiving all tolls and profits, income and revenue of said company's said railroad, and other prop-
119 erty described in said lease aforesaid. Your orator is informed and believes, and therefore so says, that said company had no legal right or competent authority to make said lease; that the same was made to delay and defraud your orator, as a creditor of said company, and is directly in fraud of his rights, and constitutes, in connection with said Selah's possession and claim of title thereto under the same, a cloud upon your orator's right to sell said property on your orator's said writ of fieri facias, and seems to be, and is, an impediment in the way of your orator's said writ, and that said Selah is now in possession of all the said property, rights, franchises, and privileges and claims, and pretends to be the absolute owner of all the said personal property so expressed in said lease to be sold to him, said Selah.

And your orator further shows that at Milwaukee, in said district, heretofore, to wit, on the 30th day of September, A. D. 1857, the said company, defendant, designing and intending to cheat and hinder, delay, and defraud your orator and the creditors of the said company, did pretend to and in form did make, subscribe, seal, and deliver to one D. C. Freeman, whom your orator prays may be made a defendant to this bill, a lease or instrument in writing, in which said lease the said company did pretend to and did express that it did then and there and thereby sell and convey to said Freeman all its personal property of every name, kind, and description in the State of Wisconsin, used in and appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, and said company did therein and thereby also pretend and express that it did thereby lease and let unto said Freeman, from and after the day and year last aforesaid, for the term of one year then next ensuing, its entire railroad and railroad route from the city of Milwaukee, by the way of Watertown and Columbus, to Mainland in the county of Columbia, and commonly called and known as the Watertown division of the La Crosse and Milwaukee railroad, together with its right of way, depot grounds, and all buildings and tenements of whatever kind and description connected therewith, or belonging or incident thereto, which said pretended lease contains many mutual covenants between *between* said company and said Freeman.

Your orator says that he is informed and believes and so says, that said company had no legal authority to make said lease, and that the same was made and delivered by said defendant with intent to delay, hinder, and defraud its creditors, as the said Freeman, when he received the same, to wit, on the 30th day of September, A. D. 1857, well knew. Your orator further shows that said Freeman, immediately after the execution and delivery to him of said lease, did take

possession of all the property enumerated in said lease, and ever since has and now does claim to and does receive all tolls, revenue, and profits arising from the property in said lease enumerated, which is part of the property levied on by said marshal under your
120 orator's said writ of fieri facias as hereinbefore stated. And that said lease, which was, on the 2d day of October, A. D. 1857, recorded in the office of the secretary of state of the State of Wisconsin and the possession and claim of right of said Freeman under said lease, are a cloud upon your orator's right to sell said property on the writ of fieri facias issued in his favor as aforesaid, and are an impediment in the way of the execution of said writ. Your orator further shows that heretofore, to wit, on the 2d day of October, A. D. 1857, (while the trial of the issues joined, in the action in which your orator recovered the said judgment hereinbefore mentioned, was proceeding in said court, and after it had become apparent that your orator would recover a large sum of money in said action,) the said the La Crosse and Milwaukee Railroad Company, defendant, intending and designing to cheat and defraud your orator as a creditor of said company, defendant; and to prevent your orator from collecting any judgment he might recover in said action, and to delay, hinder, put off, cheat, and defraud the creditors of said company defendant, did, to wit, at the city of Milwaukee in said district, suffer a judgment to pass against it, said company defendant, by confession, in the said district court of the United States for the said district of Wisconsin, in favor of said Selah Chamberlain, without service of process or suit brought, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents damages, and fifteen dollars and fifty cents costs, in all, for the sum of six hundred and twenty-nine thousand one hundred and five dollars and twenty-two cents, which said judgment, fraudulently suffered as aforesaid, was duly and regularly entered and docketed in said court on the day and year last aforesaid, and appears and seems to be a lien and encumbrance upon all real property of the said defendant company within the said district of Wisconsin, including the real property hereinbefore described and levied upon as aforesaid. Your orator further shows, that he is informed and believes, and thereupon he says, that the said company defendant, when it so suffered said judgment to pass by confession in favor of said Chamberlain as aforesaid, was not indebted to said Chamberlain in the sum described and specified in said confession of judgment; and did not owe nor was indebted to said Chamberlain in a sum exceeding the sum of fifty thousand dollars; and that no consideration or value was ever received by, or at any time accrued to, said company defendant, for said judgment above and beyond the sum of fifty thousand dollars; and that said judgment was, by said company defendant, suffered and permitted to pass and be entered and docketed as aforesaid, with the intent thereby to hinder, delay, defraud, and put off the creditors of said company defendant (and particularly to hinder, delay, and defraud your orator,) by the pretence that said judgment was a good and valid lien upon all the real property of the said defendant com-

pany in said district; and your orator is informed and believes, and therefore says, that the said Chamberlain, when he so received the said lease, and when said judgment was entered up and docketed in his favor as aforesaid, well knew that said company designed and intended thereby respectively to hinder, delay, cheat, and defraud its creditors, (and particularly your orator;) that said Selah intended, when he so received said lease and said confession of judgment respectively, to thereby respectively injure, defraud, and delay your orator; and that the said Selah has sued out writ of fieri facias on said judgment in his favor, and is now threatening to sell, under the same, the railroad iron levied on by your orator as aforesaid, of great value, to wit, of the value of four hundred and twenty thousand dollars.

121

Your orator further shows, that on or about the 15th day of June, A. D. 1856, the said company defendant was the sole owner, and seized in fee, of each and every of the said lots of land, city lots in the city of Milwaukee, in said district, hereinbefore particularly described, and on which said marshal has levied your orator's writ of fieri facias, as hereinbefore set forth, and that said lands were then and there of great value, to wit, the value of one hundred thousand dollars and upwards; and that Byron Kilbourn, Moses Kneeland, and James Ludington, were three of the directors of said company, defendant, on the day and year last aforesaid; and that on or about the day and year last aforesaid, while said company, defendant, was so seized of said land, the said Moses Kneeland and James Ludington, were appointed by the board of directors of said company defendant, or by the executive committee of said board (which said board was composed of the said Kilbourn, said Kneeland, said Ludington, and others,) a committee to sell and dispose of said lands, worth at that time to the said company (as the said Kilbourn, Kneeland, and said Ludington then well knew) more than one hundred thousand dollars; and your orator is informed and believes, and therefore says, that the said Kneeland and said Ludington, then and there designing and intending to injure and defraud said company and its creditors, and disregarding their duty as directors as aforesaid in the premises, and intending unlawfully and fraudulently to acquire to themselves and the said Kilbourn, by a violation of their duty as directors as aforesaid, the said lands for a grossly inadequate price, did sell and transfer said lands, worth, as they then and there well knew, more than one hundred thousand dollars, to one Charles D. Nash, for the nominal consideration of twenty thousand dollars, in bonds or stock of said company defendant; but that said Kilbourn, said Kneeland, and said Ludington, or one of them, furnished to said Nash, directly or indirectly, whatever the said Nash pretended to pay to said company for said lands, and that said sale was made to said Nash with the frudulent secret arrangement and understanding, between said Nash and said Kilbourn, said Kneeland and said Ludington, or one of them, that said Nash should thereafter, when requested by said Kilbourn, Kneeland, or Ludington, convey and transfer said lands to said Kneeland, said Kilbourn, or said Ludington, for the benefit of said

Kilbourn, Kneeland, and Ludington, for a nominal or no con-
122 sideration; and that said Nash was wholly disinterested in said pretended sale to him of said land; and that soon after the conveyance of said lands to said Nash, that the said Nash did, in pursuance of said fraudulent and corrupt arrangement hereinbefore stated, convey and transfer said lands to said Kneeland for no consideration, or a nominal or pretended consideration; that said Kneeland, soon after the conveyance aforesaid to him, conveyed and transferred to said Ludington one-third of said land for no consideration or for a nominal and pretended consideration, but really in pursuance of said corrupt agreement; and that said Kneeland now holds a record title to two-thirds of said land for himself and the said Kilbourn; that said Kneeland, said Kilbourn, and said Ludington pretend to hold these lands as aforesaid, which are now worth more than two hundred thousand dollars, in fraud of your orator's rights as a creditor of said company, and by reason of a violation of their duty as directors as aforesaid, and trustees of this same property, and that the same ought to be applied to the payment of your orator's said judgment.

123 *Exhibit No. 5.—Answer of Chamberlain to Cleveland bill.*

The district court of the United States for the district of Wisconsin, in chancery.

The separate answer of Selah Chamberlain, one of the defendants to the bill of complaint of Newcomb Cleveland, complainant, against this defendant, impleaded with the La Crosse and Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Chas. D. Nash, defendants:

This defendant, now and at all times saving and reserving unto himself all benefits and manner of exception to the many errors and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says:

That he has been informed, and believes it to be true, and therefore admits, that the complainant did recover a judgment against the La Crosse and Milwaukee Railroad Company for the amount and in manner and form as in the bill of complaint alleged; but whether the whole, or any parts thereof, is still owing and due to the said complainant, this defendant has no knowledge or belief; nor has he been informed, save by the complainant in his bill of complaint, and this defendant leaves the complainant to his proofs in that regard. And this defendant, further answering, says he admits it to be true that the said La Crosse and Milwaukee Railroad Companies did, on or about the twenty-sixth day of September, in the year 1857, make, seal, execute, and deliver to this defendant a certain instrument in writing, and which this defendant believes to be the same which is mentioned and alluded to in the said bill of complaint as a pretended lease, the terms whereof are partially set forth in the complainant's bill, and wherein the terms and conditions of said instrument are in part truly set forth, and in a great part untruly alleged. That said

instrument contains articles of agreement between this defendant and the said railroad company, and was on said day interchangeably executed in duplicate by them; but whether the same *the same* is in judgment of law a lease, this defendant is unadvised, and he humbly leaves this honorable court to construe and give said contract its legal
124 operation and efficacy, according to the true and lawful intent of the parties thereto.

That said contract was entered into with the sole view and design of vesting in this defendant the right of possession, enjoyment, and use of all and singular the property, rights, privileges, franchises, ams emoluments therein mentioned and expressed, and upon the ternd and conditions therein expressed, as a surety for, to this defendant, and as a means of payment of a large sum of indebtedness then due and owing from said railroad company to this defendant. The particulars whereof are hereinafter set forth and disclosed—a true copy of which said instrument, or contract, is hereunto annexed and marked Schedule A. But this defendant expressly denies that the said instrument, or contract, was executed or entered into with any design or intent to injure, delay, cheat, or defraud the creditors of said railroad company, or that any covenants, agreements, or conditions were incorporated therein to cover any covinous or fraudulent design, or with a view or intent of giving the same any specious or circumstancial character. But on the contrary thereof, he avers that the said instrument was executed, and all the covenants and agreements therein contained were entered into with the single purpose and design of creating for and affording to this defendant a security for just indebtedness as aforesaid, and upon the considerations blended therewith, which are hereinafter more particularly mentioned and disclosed; and he admits that thereunder, and on the first day of October last past, he entered into actual possession of all and *and* singular the property, rights, privileges, and franchises described in or contemplated by the said instrument or contract, and that he has employed and enjoyed the use and revenue thereof. But he nevertheless avers that he had the lawful right so to do, and that he has so done in all respects conformable to the terms and conditions of said contract and articles of agreement. And this defendant, further answering, says he is advised, and he submits to this honorable court, that the said La Crosse and Milwaukee Railroad Company had lawful and competent power and authority to make and enter into the said contract and agreement with this defendant, and to do all things therein and thereby contemplated; and he denies that the same was or is in fraud of the complainant's rights as a creditor of said company, or that the same is a cloud upon his rights to sell upon execution any property of said railroad company subject thereto. But this defendant submits, that save as to personality the complainant may levy and sell the property and interests of the said corporation subject to the rights of this defendant, as well and absolutely as though this defendant were not in possession thereof. And this defendant, further answering, says that on the twenty-sixth day of September, and contemporaneously with the said contract or agreement set forth herein as Schedule A, there was

entered into between this defendant and the said railroad company another agreement, a copy whereof is hereunto annexed and marked Schedule B. And this defendant, further answering, says it is
125 true, and he therefore admits, that on or about the second day of October, in the year 1857, the said railroad company did suffer judgment to be entered against it in the name and in favor of this defendant, for about the sum of six hundred and twenty-nine thousand one hundred and five dollars; but this defendant denies that said judgment was based on any fictitious consideration, or that the same was created with any intent or design to hinder, delay, or defraud the creditors of said railroad company, or with any fraudulent or illegal motive or purpose whatever. But on the contrary thereof, he avers the truth to be that said judgment was entered upon a promissory note executed by said railroad company to this defendant, with a warrant of attorney accompanying the same for confession of *of* judgment, for actual existing indebtedness from said railroad company to this defendant; and so far from said judgment being in whole or in part without consideration, or having been created upon any merely pretended or fictitious considerations in whole or in part, the said corporation was at the time in fact and still is indebted to this defendant in a much larger sum than is expressed in said judgment. The real and true considerations upon which such indebtedness accrued and was created is hereinafter fully set forth, and is as follows: On or about the twentieth day of November, in the year 1856, this defendant entered into a contract with the said corporation, whereby this defendant was to do and perform certain labor and services for said corporation in the ballasting of its railway track between the city of Beaver Dam and Portage City in Wisconsin, being part of that portion of said railroad known as the "eastern division," upon the terms and at the rates and the prices fixed in said contract, a true copy whereof is hereunto annexed and marked Schedule C.

This defendant performed said contract, and the amount, character, and value of the word done by him thereunder appears by the final estimate of E. W. Woodward, esq., the chief engineer of said railroad company a true copy whereof is hereunto annexed, and marked "Schedule D." In addition thereto, this defendant did and performed in and about such work, extra labor and services, and furnished and provided means and materials therefor, and for which bills or invoices were from time to time rendered by this defendant to said company, the aggregate whereof appears in the account hereinafter referred to, but the items and particulars whereof appear in the papers hereunto annexed, and marked respectively, papers 1, 2, 3, 4, 5. The aggregate amount accruing to this defendant for work done and performed, and for materials and means furnished in and about the work upon said eastern division, is about the sum of one hnndred and twenty four thousand eight hundred and fifty-six dollars and sixty-four cents; and all the payments made to this defendant thereon appear in his general account, hereinafter more particularly referred to. On or about the twentieth day of January, in the year 1857, this defendant entered into another contract with the said corporation for

the construction, by this defendant, of that portion of the rail-
126 road of said corporation known as the western division, and extending from Portage City aforesaid to La Crosse, in Wisconsin, the terminus of said road, for the prices, and upon the terms and conditions expressed in said contract, a true copy whereof is hereunto annexed, and marked "Schedule E." This defendant entered upon the work contemplated by said last-mentioned contract, in the month of February thereafter, and continued to prosecute the same under and pursuant to said contract, and another contract or agreement supplemental thereto and modifying the original in some particulars, entered into between this defendant and said corporation, on or about the thirteenth day of April, in the year in 1857, a true copy of which supplemental contract is hereunto annexed, and marked "Schedule A A," until about the twenty-sixth day of September last past, when said original contract and supplement were still further modified by the contract or agreement hereinbefore referred to, and a copy whereof is annexed as aforesaid, and marked "Schedule B."

And this defendant avers that the value of the work, labor, and services by him performed and rendered, under said construction, contract, and supplement, governed by the rates and prices stipulated for in said contracts, and inclusive of what remains to be done by this defendant to complete the work to New Lisbon, as contemplated in the contract hereinbefore set forth as "Schedule B," amounted to the sum of one million seventy-six thousand four hundred and fifty dollars; and the nature, character, and particulars of such work appears in the final estimate of Mr. Woodward, the said chief engineer, a true copy whereof is hereunto annexed, and marked "Schedule F," and all the payments which have ever at any time been made thereon truly appear in the said general accounts, hereinafter more particularly referred to. The amount of work remaining undone, and necessary to be done to complete said road to New Lisbon as aforesaid, according to said contracts, as modified, was, as appears by the estimate of the chief engineer aforesaid, on the first day of October last past, in value estimated by the rates and prices stipulated for in said contracts, the sum of fifty-six thousand five hundred dollars, which sum was deducted in the settlement and adjustment of accounts between this defendant and said corporation, as hereinafter mentioned. A true copy of the estimate of said engineer of incompleted work aforesaid is hereunto annexed and marked "Schedule I;" and this defendant avers that the sum expressed in the said judgment confessed to him was the amount actually ascertained to be due to him on the said first day of October, from the said railroad company, for work, labor, and services, and materials furnished under said contracts. And this defendant, further answering, says that said corporation was largely in arrear to him during the months of July, August, and September last past, but the aggregate of which arrearages were not actually ascertained from the fact that no final estimate of the work done by him had been made, and from the circumstances that monthly estimates provided for in said construction contracts
127 were, as is usual in such cases, merely approximate, and al-

ways really intended as under estimates. That this defendant was, however, aware that the indebtedness of said corporation to him was large, default having been made in the payment of the monthly estimates, as provided for in said contracts; but this defendant was put off with partial payments, and assurances from the officers and agents of said company of their intention and ability soon to liquidate, or nearly so, the indebtedness to this defendant; he had made frequent applications for payment or security, and repeatedly suggested and urged the security which was ultimately given by means of the contract set forth in "Schedule A;" but the officers refused from time to time, on the ground alleged, that it would injure the credit of the corporation; and matters went on thus until about the first day of September last past. The arrearage of said company becoming so large, and constantly increasing, this defendant threatened legal proceedings against said company, and visited Milwaukee with a view of taking professional advice, and if possible, of securins his claim by levy on the railroad iron, which is mentioned in the bill of complaint.

That this defendant communicated his design to the officers and some of the board of directors of said company, and he again urged upon them to place him in possession of the road as mortgagee or otherwise, that he might receive and apply the income towards his indebtedness, but which was still declined; and they besought this defendant not to resort to such proceedings, as it would ruin the already impaired credit of the corporation. That they then contemplated mortgaging said iron as additional collateral security to certain bonds of the company which were in market, and when done would render reasonably certain the prospect of their negotiating something like a million of the corporation bonds for cash, negotiations for which were then pending and nearly complete, and which would relieve the company from its embarrassments. And the strongest assurances were given to this defendant of the success of such pending arrangements. And he was thereby induced to forego legal proceedings upon the promise that out of the funds thus expected to be realized this defendant should receive the sum of one hundred and fifty thousand dollars, and that provision should be made for the speedy adjustment of the balance due this defendant; and that all notes of said company, and of which he then held a large amount, to apply when paid on his account, should be provided for and paid. And with the further assurance and promise that in any event the said corporation would protect this defendant and secure to him the amount his due. That from the information which this defendant then received, and from what he has since learned, he has reason to believe that the assurances and promises which he then received were based on a reasonable and just expectation and belief on the part of the officers and directors of the said corporation that they would be able to fulfil them; and defendant is informed and believes that shortly thereafter the said company did execute a mort-
128 gage of said railroad iron to secure certain land grant bonds so denominated, but the terms and conditions of which he is unable to state.

That soon thereafter events happened which caused a shock to the monetary affairs of the country, and which ultimately led to the crisis and distrust which at present prevails therein; owing to which, as defendant was informed by the officers and agents of said company, they were unable to keep their engagements with him; and so believing, this defendant, shortly before the said twenty-sixth day of September last past, again applied to the officers and directors of the said corporation for adjustment and settlement of his accounts, and for security of the sum his due. They then told this defendant of their utter disappointment in all their expected arrangements, and admitted to him that they would be unable to pay him the amount due him at present; and furthermore, that in view of the unsettled state of the business and commerce of the country, they could not reasonably expect, for an indefinite time to come, to fulfil the engagements of said company in said construction contract contained; whereupon negotiations ensued between this defendant and the officers and directors of the said corporation, which led to the agreement that the said construction contract should be indefinitely suspended; and in view of the immense injury to be sustained by this defendant consequent thereupon, his damages were liquidated as expressed in the agreement therefor and hereinbefore set forth as "Schedule B," at the sum of two hundred thousand dollars; and this defendant again most urgently insisted on security, and that as a means thereof he should be let into possession of the entire road, and to receive the earnings to apply on his indebtedness, which was for a time resisted and declined; but finally, after much negotiation, this defendant's demand was acceded to in a modified form; and it was agreed, that in order to secure to this defendant the amount actually due to him from said corporation, he should be put in possession of the La Crosse and Milwaukee railroad and appurtenances, described and expressed in "Schedule A," and entitled to receive and enjoy its net earnings and revenues for the objects and purposes expressed and contemplated in the contract or agreement, a copy whereof is set forth in "Schedule A" aforesaid. And the said contracts and agreements set forth in "Schedule A and B" aforesaid, were prepared and duly executed and delivered as aforesaid. That this defendant then demanded an immediate adjustment of the accounts between said corporation and this defendant, and which was, during the space of about three days thereafter, accomplished. That the board of directors of said corporation were present at such adjustment and settlement; this defendant and said chief engineer most of the time.

It involved a critical examination of estimates and accounts, as contained on the books of this defendant and those of said corporation; and although this defendant claimed and still insists that a considerable larger amount was his due, the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents,
129 was finally agreed upon as the amount due this defendant for completed work under said contracts, and exclusive of said two hundred thousand dollars liquidated damages; and for which sum it

was agreed that the promissory note of said corporation should be executed and delivered to this defendant, accompanied with a warrant of attorney for the entry of judgment, which was done accordingly; upon which this defendant caused judgment to be entered in this honorable court, on the law side thereof, as is hereinbefore set forth; and he admits that he caused execution to be issued thereon, and to be levied upon the said railroad iron, and upon that portion of the said La Crosse and Milwaukee railroad, its appurtenances, franchises, and privileges, known as the "Watertown division," and all particularly described, as he believes, in the bill of complaint; and he avers that he had lawful right so to do, and that he was induced thereto in view of the large prior encumbrances upon the property and premises of which he was thus put in possession of, and of the large amounts to be paid out of the earnings and revenues of said railroad, prior to any right of application thereof to the indebtedness of this defendant. And this defendant further answers and says that he has annexed hereto a general statement of accounts between himself and said corporation, and growing out of the matters and contracts hereinbefore set forth, which shows the amount of the work, labor, and services, and materials by this defendant done and performed, and furnished for and to corporation, under said ballasting and constructing contracts; as also all the payments ever made thereon, and all deductions proper to be made from the amounts therein charged or debited, and the surrender of all notes, bills, or securities, held by this defendant prior to the first day of October aforesaid, and showing the balance due to this defendant on the said first day of October; said account is just and true in every particular, unless some slight errors or omissions have been created or have occurred therein, and if any such have or do occur, they are purely accidental and unintentional; and said account is annexed and marked "Schedule G." And this defendant, further answering, says that other than the considerations and motives hereinbefore narrated and set forth, there was no other consideration or advantage paid, according or resulting to said railroad company, for the making and delivery to this defendant, for the instrument or contract under which he took possession of said road, its premises, property, and franchises as aforesaid, unless it was the consideration by said corporation of the fact that the labor and services of this defendant, and the materials by him furnished, and the large advances by him thereby made, to said corporation, had added value to all encumbrances upon its road and franchises, enhanced its wealth and increased the prospects of its creditors ultimately being satisfied of their just dues, might have influenced a compliance with this defendant's request for such security. And this defendant, further answering, says he does not claim or pretend to be the absolute owner of the whole or any part of the property described
130 or enumerated in the contract or agreement in virtue of which he was placed in possession of said road and other property and premises therein described and enumerated, but on the contrary he has ever claimed to hold the same as security for his indebtedness aforesaid, and upon the trusts and for the sole uses and purposes de-

scribed in said contract or agreement. And this defendant, further answering, says that neither the said Byron Kilbourn, Moses Kneeland, and James Ludington, or any of them, are or ever were, directly or indirectly, interested or concerned in the said judgment of this defendant against said corporation, or in the other indebtedness mentioned hereinbefore; but, on the contrary, this defendant is alone and solely the *the* owner thereof and interested therein, with this exception, that one Daniel L. Wells, who is and has been in the employ of this defendant as a partial manager and overseer, in and about the work on said railroad under said contracts, is by contract with this defendant to receive from this defendant, as compensation for the services of said Wells, a certain percentage of the profits on the work done under said contracts, and there is no understanding or agreement expressed or implied, direct or indirect, secret or open, by which the said Kilbourn, Kneeland, and Ludington, or either of them, shall ever have or receive any benefit of said judgment or indebtedness, or any share therein, or in the proceeds thereof when collected or realized at any time or in any manner whatsoever.

And this defendant, further answering, says that as to the matters and things set up in said bill of complaint in regard to the alleged transfer of certain real estate therein mentioned by said corporation to Chas. D. Nash, this defendant is an entire stranger, and he has no knowledge or information in regard thereto other than that contained in the complainant's bill, and he leaves the complainant to his proofs in that regard. And this defendant, further answering, says that at the time he was notified by the officers and directors of said corporation of their inability to provide means for the completion and performance on their part of the conditions of said construction contracts, he had a large force of men and horses employed on said railroad, and a large amount of tools, implements, carts, and wagons; he had employed some twelve hundred men and three hundred horses, and a large majority of them were to become and did become idle; and he has been compelled to make large and ruinous sacrifices in the sale of his horses, and has had left upon his hands a very large amount of property which he must either sacrifice or allow the same to remain entirely unproductive until the work, under said construction contracts, may be resumed; he had also to forego for an indefinite time the profits of his contracts. These facts and considerations, as well as others, important to be taken into view in estimating the damage by him to be sustained, induced this defendant to demand from said corporation a reasonable compensatory sum therefor, and the sum named in the agreement set forth as "Schedule B" was finally, and after much negotiation and controversy, agreed on as
131 a compromise. This defendant demanded a much larger sum, to which he believed himself entitled, and he still insists it ought to have been awarded to him. That upon the principles which he is informed prevailed upon the trial of the suit of the complainant against the said corporation for an alleged breach of a like contract, though vastly inferior in extent, this defendant verily believes he would have been lawfully and justly entitled to the sum of at least

three hundred and fifty thousand dollars; and defendant further says, that at the time said sum was agreed on, it was also verbally agreed that he should receive, in part payment of such damages, two hundred thousand dollars of the second mortgage bonds of said corporation, at the rate of fifty cents upon the dollar; and shortly after the first October he did receive said bonds, and there now remains due to him of said sum thus agreed upon for his damages but the sum of one hundred thousand dollars.

And this defendant, further answering, as to his dealings with the said railroad company, says, that some time in or about the month of February last, he made application in writing to said corporation, through its board of directors, for one hundred and fifty thousand dollars of the bonds of said corporation, known as the ten millions issue, to be applied as a payment to this defendant on the final settlement of accounts when said railroad should be completed to La Crosse, said bonds to be issued on certain conditions in said application named; a true copy of such application is hereto annexed and marked "Schelule H." That such request or application was acted upon by the board of directors, and bonds were issued to the nominal or par value of one hundred and twenty-nine thousand dollars, and twelve hundred and ninety shares of privilege stock, so called, was issued, as follows: March 19, sixty-five first mortgage land grant bonds at eighty cents, and six hundred and fifty shares of said stock five per cent paid; and April second, sixty-four of like bonds, and six hundred and forty shares of like stock, all of which were received by this defendant at the rate of eighty cents on the dollar for said bonds, making, inclusive of said stock, the sum of one hundred and nine thousand six hundred and fifty dollars to be accounted for by this defendant upon the completion of his said construction contract, and the final settlement of accounts between him and said company.

And this defendant, further answering, says that he holds, nor has he in his possession or under his control, any note, bill, bond, mortgage, or security, or any property, or valuable thing whatsoever belonging to said corporation, or in which it has any interest other that what is hereinafter declared and set forth.

And this defendant, further answering, says that upon the completion by him of said railroad, or the work, labor, and materials to be done and furnished by him as contemplated in the contracts and agreements therefor hereinbefore recited to New Lisbon aforesaid, the said railroad company will be indebted to this defendant, in addition to the indebtedness hereinbefore stated for the value of that portion of the work remaining undone on the first day of October, as aforesaid, and which was then estimated as aforesaid at the sum of fifty-six thousand five hundred dollars. That all and singular the premises are true; wherefore this defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

132

SELAH CHAMBERLAIN.
EMMONS & VAN DYKE,
Solicitors and of Counsel.

DISTRICT OF WISCONSIN, *ss:*

Selah Chamberlain, being duly sworn, says that he has read the foregoing answer by him subscribed, and that he knows the contents thereof; and that the same is true of his own knowledge, except as to the matters and things therein stated to be upon his information and belief, and as to such matters, he has been informed and verily believes it to be true.

SELAH CHAMBERLAIN.

Sworn to before me, Nov. 24, 1857.

J. M. MILLER, *Clerk.*

133 *Exhibit No.* 6.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America, for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the third day) of January, A. D. 1859.

Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-first day of said term, to wit, on the eleventh day of February, A. D. 1859, the following proceedings were had, to wit:

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Selah Chamberlain. } In equity.

This day came the parties by their counsel, and on due consideration of the pleadings, proofs, and arguments of counsel, it is thereupon ordered, adjudged, and decreed by the court, that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal property, (except such as is used on the Milwaukee and Watertown division of said railroad,) and leased to said Chamberlain their said railroad and appurtenances, rights, franchises, and privileges be, and hereby is, vacated, annulled, and made void, so that the same shall not hereafter be of any force or effect whatever.

And that the said Selah Chamberlain be, and hereby is, perpetually enjoined and restrained from using, managing, running, controlling, or meddling with said railroad, or the rolling stock, personal property, or any of its appurtenances or franchises, or any thing connected therewith, under or by virtue of said article of agreement.

And it is further ordered, adjudged, and decreed by the court that the judgment of the said Selah Chamberlain against the La Crosse

and Milwaukee Railroad Company, entered in this court on
134 the second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon, be, and hereby are, vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever.

And it is further ordered, adjudged, and decreed by the court that the said defendant, Selah Chamberlain, pay the costs to be taxed, so far as they accrued in this proceeding against him. And that he pay the same within twenty days, or in default thereof an execution be issued against him for the same.

And as the lease and assignment of the said company to D. C. Freeman has expired by its own limitation, it is further ordered, adjudged, and decreed by the court that the defendant, D. C. Freeman, pay the costs to be taxed, so far as they accrued in this proceeding against him, within twenty days, or in default thereof an execution be issued against him for the same.

And it is further ordered, adjudged, and decreed by the court that the La Crosse and Milwaukee Railroad Company pay the costs to be taxed, so far as they accrued in this proceeding against it, within twenty days, or in default thereof an execution be issued against it for the same.

And it is further ordered that reference be, and hereby is, made to a master of this court to ascertain and report the annual income of the several lots described in the bill, as having been conveyed to Moses Kneeland and James Ludington from the time of their said purchase, together with a statement of the interest thereon. And also to ascertain and report the amount of the actual cost of permanent improvements made on said lots by said Kneeland and Ludington, together with interest thereon; and also the amount of liens and taxes on said lots that have been paid by said Kneeland and Ludington, or by C. D. Nash for them, together with interest on the same. And that this bill be retained for further decree and proceedings after the coming in of said report.

It is ordered by the court that in case of appeal by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, or either of them, a bond to authorize a supersedeas shall be given, and filed with sufficient sureties, to be approved by the court or judge, in the penal sum of one hundred and fifty thousand dollars.

A. G. MILLER.

135 AUGUST 1, 1864.

This day came the complainant by its counsel, and on its motion, ordered that the defendant plead, answer, or demur to the complainant's amended bill of complaint on or before the first Monday of September next, or said amended bill will be taken as confessed.

SEPTEMBER 28, 1864.

This day came the defendant by his counsel, Messrs. Emmons & Van Dyke, and filed his answer in the words and figures following, to wit:

Circuit court of the United States for the ninth circuit and district of Wisconsin, in equity.

The answer of Selah Chamberlain to the bill of complaint of the Milwaukee & Minnesota Railroad Company, complainant, against the said Selah Chamberlain, defendant:

This defendant, now and at all times saving and reserving unto himself all benefit and manner of exception to the many errors and imperfections in the said bill of complaint contained, for answer thereto, or unto so much thereof as he is advised it is material or necessary for him to make answer unto, answering says:

That he admits that the La Crosse & Milwaukee Railroad Company did make, execute, and deliver to this defendant the instrument of lease or mortgage, a copy of which is annexed to the said amended bill of complaint, and marked Exhibit No. 3; and he further admits that under and pursuant to said lease or mortgage, he entered into possession of the railroad, premises, and property described in the said instrument; but this defendant expressly denies that said deed of lease or mortgage was so executed and delivered to him with any intent or design to hinder, delay, or defraud the creditors of the said La Crosse & Milwaukee Railroad Company; on the contrary, he declares and avers the truth to be, that the same was given in good faith, and for the lawful purpose of securing to this defendant an existing indebtedness of the said La Crosse &
136 Milwaukee Railroad Company to this defendant; that such indebtedness arose out of contracts between said company and this defendant for the completion and repairs of that portion of its railroad between the city of Milwaukee and Portage City, and known as the eastern division thereof, and for the construction of the western division thereof, viz: that portion reaching from Portage City to La Crosse; the major part of said indebtedness having accrued under a contract by this defendant for the construction of said western division; and defendant avers that the true and actual consideration for said deed of lease or mortgage was for the work, labor, and services rendered by this defendant, and his agents and servants, and for moneys expended and materials furnished in and about the completion, repairs, and construction of the divisions of said railroad as aforesaid.

And this defendant, further answering, says that he is advised and believes, and so submits to this honorable court, that the said La Crosse & Milwaukee Railroad Company had power, and competent and lawful authority to execute to defendant the said lease or mortgage, and to create the security thereby intended.

And this defendant, further answering, says he has no knowledge as to whether the said La Crosse & Milwaukee Railroad were at the time of the making of said lease or mortgage indebted to Vose, Livingston & Co., as alledged in *in* the bill of complaint; but this defendant is informed and believes to the contrary, and therefore denies the allegation in that regard in the bill of complaint contained; and he expressly denies that there was in the making of the said

lease or mortgage any intent or design to injure, hinder, delay, or defraud the said Vose, Livingston & Co., or in any manner whatsoever to impair any of their alleged or pretended claims or rights.

And this defendant, further answering, says he admits it to be true that the said La Crosse & Milwaukee Railroad Company suffered, and that there was rendered in favor of this defendant a judgment, in the district court of the United States for the district of Wisconsin, for the sum of six hundred and twenty-nine thousand,
137 eighty-nine dollars and seventy-two cents; but he denies that the same was done with any covin or fraud, or under any covinous or fraudulent intent whatever; on the contrary he avers the truth to be that the consideration for said judgment was a part of the indebtedness proposed to be secured to this defendant by the said lease or mortgage as hereinbefore stated; and he expressly avers that the whole sum expressed in the said judgment was due to him at the time of the rendition thereof; and that the sole, true, and actual consideration for said judgment was work, labor, and services performed and rendered by this defendant, and for money expended, and materials by him furnished in the completion, repairs, and construction of the two divisions of said railroad as aforesaid.

And defendant further says that the answer by him filed to the bill of complaint of Newcomb Cleveland, reference to which is made in thesaid amended bill of complaint, is true; and for the purposes of detail and explanation, he craves leave to refer to the copy annexed to the amended bill, or the original thereof, as a part of this his answer.

And this defendant, further answering, says he admits the fact to be, that one Newcomb Cleveland recovered a judgment against the La Crosse & Milwaukee Railroad Company, and caused execution to be issued thereon as alleged in the amended bill of complaint; that he afterwards exhibited his bill of complaint in the said district court, and that a decree was had thereupon in manner and form as alleged; but this defendant denies that the complainant in this bill was in any sense a party thereto; and he is advised and submits to the court that the said Milwaukee & Minnesota Railroad Company can take no advantage or benefit from the said decree, or in anywise conclude this defendant thereby.

And this defendant, further answering, says he admits he was in possession of said railroad until the 18th day of May, 1860; but he denies that he had, in his hands, on that day, any moneys applicable to the payment of the interest on the second mortgage, so called, and mentioned in the amended bill of complaint; he further denies that he voluntarily surrendered and abandoned his lien upon, and
138 right of possession of, said railroad to the trustees in said second mortgage; that though he did surrender possession to said trustees upon their demand and claiming under their prior right and the covenants in their mortgage, yet he did so reserving and protesting his right to reclaim possession when the said second mortgage should be paid or extinguished. The act of such surrender by this defendant was evidenced by writings, copies of which are hereto annexed and made a part of this answer, and marked respectively

Exhibits No. 1, No. 2, to the originals of which, when produced, defendant craves leave to refer.

And this defendant claims and insists that the said judgment in his favor against the La Crosse & Milwaukee Railroad Company, and the said lease or mortgage are valid and subsisting liens upon the said railroad as against the complainant in this cause, and prior and superior to any lien or claim which it can assert.

And this defendant, further answering, says that heretofore, and on or about the 29th day of June, A. D. 1863, in this honorable court the said complainant exhibited its bill of complaint against this defendant and others impleaded with this defendant, wherein, as against this defendant, the same identical matters of fact and law were alleged, and the same identical relief prayed, as in and by this the complainant's amended bill of complaint alleged and prayed; that this defendant appeared to the said former bill of June 29, A. D. 1863, and that such proceedings were thereafter had, that the said bill was dismissed upon its merits out of this said court, and by the judgment and decree of this court; which said judgment and decree remains in full force, unreversed and unaltered; and this defendant claims and submits that the same is a bar to the present suit, and that the complainant is thereby estopped to ask the relief which it seeks and prays for in the bill of complaint; and this defendant claims the same benefit of the matter thus alleged in bar and estoppel, as though he had pleaded the same.

And this defendant prays to be hence dismissed with his
139 reasonable costs and charges.

S. CHAMBERLAIN.
EMMONS & VAN DYKE,
Solicitors for Defendant.

DISTRICT OF WISCONSIN, *ss:*

Be it remembered, that on this twenty-eighth day of September, A. D. 1863, before me, the undersigned, the clerk of the circuit court of the United States for the district of Wisconsin, personally appeared Selah Chamberlain, who being by me duly sworn, made oath that he had read the foregoing bill by him subscribed, and that he knows the contents thereof, that the same is true of his own knowledge, except as to the matters and things therein stated to be upon his information and belief, and as to such matters he verily believes it to be true.

A. SCOTT SLOAN, *Clerk.*

Exhibit No. 1.

MILWAUKEE, *May 18th*, 1860.

Selah Chamberlain, esq.:

DEAR SIR: On the 21st day of Nov. last we demanded from you the possession of the railroad, rolling stock, and appurtenances conveyed to us by the mortgage or deed of trust of the La Crosse and Milwaukee Railroad Company, dated August 17th, 1857, upon which de-

mand we were placed in possession only of the receipts and earnings of the railroad. We now demand the actual possession of the railroad, rolling stock, and appurtenances covered by our said mortgage.

Respectfully,

GREEN C. BRONSON,
JAMES T. SOUTTER,
Trustees.

By their attorney in fact, PRENTISS DOW.

140 *Exhibit No. 2.*

Messrs. Green C. Bronson and James T. Soutter, trustees:

GENTLEMEN: In compliance with your demand of November 21st, 1859, renewed on the 18th instant, I hereby surrender to you the eastern division of the La Crosse and Milwaukee railroad, (now known as the Milwaukee and Minnesota railroad,) with the rolling stock and the appurtenances covered by or included in a deed of trust of the La Crosse and Milwaukee Railroad Company, to you as trustees, to be held by you under said mortgage or deed of trust according to its terms and conditions; but hereby protesting and insisting that the mortgage of the La Crosse and Milwaukee Railroad Company to me, (commonly called a lease,) and bearing date the 26th day of September, 1857, under which I hold and have held possession, is a subsisting and valid encumbrance, good against all persons or parties claiming subsequent to the same.

I surrender possession to you as having a prior lien or right only; and I retain all my rights and claims under my said mortgage, and shall, as soon as the amount due on said mortgage or trust deed for interest is satisfied, demand the redelivery of said road to me.

I desire that an immediate inventory of all movable property herewith delivered be taken, and that you give me your acknowledgment of the receipt of the same.

Milwaukee, May 19th, 1860.

S. CHAMBERLAIN.

141 OCTOBER 25, 1864.

This day came the complainant, by its counsel, and filed its replication as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN, def't.

The replication of the Milwaukee and Minnesota Railroad Company, complainant, to the answer of Selah Chamberlain, defendant:

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said an

swer, for replication thereunto, saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MATT. H. CARPENTER,
Sol. and of Counsel for the said Complainant.

DECEMBER 28, 1864.

This day came the parties, by their counsel, and filed their stipulation, extending the time to take testimony in this cause to the first Monday of April next, without prejudice to the right of either party to set the same down for hearing at the April term, A. D. 1865.

APRIL 3, 1865.

This day came the defendant, by his counsel, and on his
142 motion, it is ordered that this cause be, and the same hereby is, set down for hearing upon the pleadings and proofs.

APRIL 13, 1865.

This day came the parties, by their counsel, and the motion to enlarge the time for taking testimony came on to be heard and was argued by counsel, whereupon the court took the same under advisement.

APRIL 17, 1865.

This day came the parties, by their counsel, and on motion of the complainant, and the affidavits of A. Fleming and Matt. H. Carpenter, it is ordered by the court that the time to take testimony in this cause be, and hereby is, extended to the first Monday of June next, and that this cause stand for hearing on the first Monday of July next. It is further ordered, on application of the Milwaukee and St. Paul Railway Company, that said company have leave to intervene as a defendant in the cause, and to file a cross bill herein within twenty days, the filing of the cross bill and the proceedings thereunder not to delay the hearing of the principal cause.

MAY 23, 1865.

This day came the Milwaukee and St. Paul Railway Company, by Messrs. Emmons and Van Dyke, its solicitors, and filed its answer as follows, to wit:

Answer of M. & St. P. R. W. Co.

The circuit court of the United States for the ninth circuit and district of Wisconsin, in equity.

The answer of the Milwaukee and St. Paul Railway Company to the amended bill of complaint of the Milwaukee and Minnesota Railroad Company, complainant, against Selah Chamberlain and this defendant:

This defendant, now and at all times saving and reserving unto itself all benefit and manner of exception to the many errors and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as it is advised it is material or necessary for it to make answer unto, answering, says:

That it admits, upon information and belief, that the La Crosse
143 and Milwaukee Railroad Company did make, execute, and deliver to said Chamberlain the instrument of lease or mortgage, a copy of is annexed to the complainant's amended bill of complaint, and marked Exhibit No. 3. And this defendant further admits, upon information and belief, that under and pursuant to said lease or mortgage said Chamberlain entered into possession of the railroad, premises, and property described in the said instrument. But this defendant denies, upon information and belief, that said deed of lease or mortgage was so executed and delivered to said Chamberlain with any intent or design to hinder, delay, or defraud the creditors of the said La Crosse and Milwaukee Railroad Company; on the contrary, this defendant is informed and believes, and upon information and belief declares and avers the truth to be, that the same was given in good faith and for the lawful purpose of securing the said Chamberlain an existing indebtedness of the said La Crosse and Milwaukee Railroad Company to him.

This defendant, further answering, states that it is informed and believes, and avers upon information and belief, that such indebtedness arose out of contracts between said company and said Chamberlain for the completion and repair of its then railroad between the city of Milwaukee and Portage City, and known as the eastern division thereof, and for the construction of the western division thereof, viz: that portion reaching from Portage City to La Crosse, and that the major part of said indebtedness accrued under a contract by said Chamberlain for the construction of said western division. And this defendant avers, upon information and belief, that the true and actual consideration for said deed of lease or mortgage was for the work, labor, and services rendered by said Chamberlain, his agents and servants, and for moneys expended and materials furnished in and about the completion, repairs, and construction of the said division of said railroad as aforesaid.

And this defendant, further answering, says that it is advised and believes, and so submits to this honorable court, that the said La Crosse and Milwaukee Railroad Company had power and competent and lawful authority to execute to said Chamberlain the said lease or mortgage, and to create the security thereby intended.

144 And this defendant, further answering, says it has no knowledge as to whether the said La Crosse and Milwaukee Railroad Company were, at the time of the making of said lease or mortgage, indebted to Vose, Livingston & Co., as alleged in the bill of complaint; but this defendant is informed and believes to the contrary, and therefore denies, upon information and belief, the allegation in that regard in the bill of complaint contained; and it is informed and believes, and denies, upon information and belief, that there was in the making of the said lease or mortgage any intent or design to injure, hinder, delay, or defraud the said Vose, Livingston & Co., or in any manner whatsoever to impair any of their alleged or pretended claims or rights.

And this defendant, further answering, admits upon information and believes it to be true, that the said La Crosse and Milwaukee Railroad Company suffered, and that there was rendered in favor of said Selah Chamberlain a judgment in the district court of the United States for Wisconsin for the sum of six hundred and twenty-nine thousand eighty-nine dollars and seventy-two cents; but it denies, upon information and belief, that the same was done with any covin or fraud, or under any covinous or fraudulent intent whatever. On the contrary, it is informed and believes, and avers upon information and belief, the truth to be, that the consideration for said judgment was a part of the indebtedness proposed to be secured to said Chamberlain by the said lease or mortgage as hereinbefore stated; and it avers, upon information and belief, that the whole sum expressed in the said judgment was work, labor, and service performed and rendered by said Chamberlain, and for money expended and materials by him furnished in the completion, repairs, and construction of the two divisions of said railroad as aforesaid.

And this defendant, further answering, says that it is informed and believes that the answer filed by said Chamberlain to the bill of complaint, reference to which is made in the said amended bill of complaint, is true; and for the purpose of detail and explanation this defendant craves leave to refer to the copy annexed to the amended bill, or the original thereof as a part of this, its answer.

145 And this defendant, further answering, says it admits, on information and belief, the fact to be that one Newcomb Cleveland recovered a judgment against the La Crosse and Milwaukee Railroad Company, and caused execution to be issued thereon, as alleged in the amended bill of complaint; that he afterwards exhibited his bill of complaint in the said district court, and that a decree was had thereupon in manner and form as alleged; but this defendant denies that the complainant in this suit was in any sense a party thereto; and it is advised and submits to the court that the said Milwaukee and Minnesota Railroad Company can take no advantage or benefit from the said decree, or in anywise conclude this defendant thereby.

And this defendant, further answering, says it admits, on information and belief, that Selah Chamberlain was in possession of said railroad until the 18th day of May, 1860; but this defendant denies, upon

information and belief, that he had in his hands on that day any moneys applicable to the payment of the interest on the second mortgaged, so called, and mentioned in the bill of complaint.

This defendant further denies, upon information and belief, that said Chamberlain voluntarily surrendered and abandoned his lien upon and right of possession of said railroad to the trustees in said second mortgage; that though he did surrender possession to said trustees upon their demand, and claiming under their prior right and the covenants in their mortgage, yet this defendant avers, upon information and belief, said Chamberlain did so, reserving and protesting his right to reclaim possession when the said second mortgage should be paid or extinguished.

This defendant, further answering, says, on information and belief, that the act of such surrender by said Chamberlain was evidenced by writings, copies of which are hereunto annexed and made a part of this answer, and marked, respectively, Exhibits No. 1, No. 2, to the original of which, when produced, this defendant craves leave to refer.

And this defendant, further answering, states, upon information and belief, that prior to the month of May, 1864, it became and is now the equitable owner of the aforesaid lease or mortgage, so as aforesaid executed to said Chamberlain, and of the indebted-
146 ness thereby secured; and also of the said judgment rendered in favor of and in the name of said Chamberlain, and that it has paid to the said Chamberlain full consideration therefor, and received from him an assignment of the said lease or mortgage and the said judgment.

And this defendant claims and insists that the said judgment in favor of said Chamberlain against the La Crosse and Milwaukee Railroad Company, and the said lease or mortgage are valid and subsisting liens upon the said railroad, as against the complainant in this cause, and prior and superior to any lien or claim which it can assert.

And this defendant, further answering upon information and belief, says that heretofore and on or about the twenty-ninth day of June, 1863, in this honorable court; the said complainant exhibited its bill of complaint against the said Selah Chamberlain and others impleaded with him as defendants, wherein as against the defendant, Selah Chamerlain, the same identical matters of fact and law were alleged, and the same identical relief prayed as is in and by this, the complainant's amended bill of complaint, alleged and prayed; that the defendant, Selah Chamberlain, appeared to the said former bill of June 29, 1863, and made defensive allegation thereto; and that such proceedings were thereafter had that the said bill was dismissed upon its merits out of this said court, and by the judgment and decree of this court, which said judgment and decree remain in full force unreversed and unannulled.

And this defendant further in fact says, on information and belief, that its equitable title to the lease or mortgage to said Chamberlain aforesaid, and the debt thereby secured, and to the said judgment

in the name and favor of the said Chamberlain accrued after the exhibition of the said last-mentioned bill of complaint, and this defendant claims and submits that the said judgment and decree is a bar to the present suit, and that the said complainant is thereby estopped to allege the matters and things in his present amended bill of complaint contained, and to ask and pray the relief thereby prayed for and sought. And this defendant claims the same benefit of the matters and things hereinbefore alleged in respect
147 of said judgment and decree as though it had pleaded the same.

This defendant, further answering on information and belief, says that in or about the month of December, A. D. 1859, Greene C. Bronson and James T. Soutter being the mortgagees in trust named in a certain mortgage made by the La Crosse and Milwaukee Railroad Company on the eastern division of said road for one million of dollars, instituted a suit in the district court of the United States for the district of Wisconsin, in equity, to foreclose the said mortgage, and for a sale of the mortgaged premises, wherein were impleaded as defendants, the defendant, Selah Chamberlain, and the complainant, among others, as subsequent encumbrancers.

That both said Chamberlain and the complainant appeared and made answer, and the complainant in and by its said answer, alleged, as against the defendant Chamberlain, the same identical matters of law and fact which are in his present bill alleged, and that the defendant Chamberlain alleged and proved the indebtedness which, by the complainant's present bill, is sought to be impaired and set aside; that such proceedings were had in said suit, that afterwards, to wit, in or about the month of March, 1861, A. D., an order of reference was made and pronounced by the said district court to three special masters, to whom it was in and by said order referred, among other things to ascertain the amount due the defendant Chamberlain from the La Crosse and Milwaukee Railroad Company upon his said judgment and lease; and, further, to take proofs and to ascertain the true consideration for said judgments and lease, and to take proofs upon the allegations of fraud and want of consideration as to said judgment and lease made by the complainant in its answer aforesaid; that the complainant and said Chamberlain appeared before the said masters and offered and submitted proofs upon the matters so referred; that afterwards, and in the month of September, 1861, the said masters made their report to said court upon the matters so referred, and did then and there, among other things,
148 report that the said alleged indebtedness to said Chamberlain was valid and subsisting debt against the said La Crosse and Milwaukee Railroad Company, and that the said judgment was, in all respects, valid and free from covin or fraud, which said report this defendant, on information and belief, further in fact says was afterwards by said district court fully confirmed, and now remains of record in this honorable court, as by reference to the records and proceedings in said cause will more fully appear.

Whereupon this defendant claims that the complainant has become

and is estopped to make the allegation in that behalf in his bill of complaint contained, and this defendant claims the same benefit of the matters and things last aforesaid averred, as if the same were herein pleaded.

And this defendant prays to be hence dismissed, with its reasonable costs and charges.

EMMONS & VAN DYKE,
Sol'rs for Defendant.
WM. P. LYNDE,
Of Counsel.

DISTRICT OF WISCONSIN, *ss:*

Alanson Cary, of the city of Milwaukee, State of Wisconsin, being duly sworn, saith that he is the secretary of the Milwaukee and St. Paul Railway Company, the corporation defendant in the foregoing answer named; that he has read the said answer, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on the information and belief of said defendant, and that as to those matters he has been so informed, and believes it to be true.

Sworn to before me, this 23d day of May, A. D. 1865.
JAMES McFARLIN,
Com'r Circuit Court U. S., Dist. of Wis.

149 *Exhibit No.* 1.

MILWAUKEE, *May 18th*, 1860.

Selah Chamberlain, esq.:

DEAR SIR: On the 21st day of Nov. last we demanded from you the possession of the railroad, rolling stock, and appurtenances conveyed to us by the mortgage or deed of trust of the La Crosse and Milwaukee Railroad Company, dated August 17th, 1857, upon which demand we were placed in possession only of the receipts and earnings of the railroad.

We now demand the actual possession of the railroad, rolling stock, and appurtenances covered by our said mortgage.

Respectfully,

GREEN C. BRONSON,
JAMES T. SOUTTER,
Trustees.
By their attorney in fact, PRENTISS DOW.

Exhibit No. 2.

Messrs. Green C. Bronson, James T. Soutter, trustees:

GENTLEMEN: In compliance with your demand of November 21st, 1859, renewed on the 18th instant, I hereby surrender to you the eastern division of the La Crosse and Milwaukee railroad, (now known as the Milwaukee and Minnesota railroad,) with the rolling stock and the appurtenances covered by or included in a deed of

trust of the La Crosse and Milwaukee Railroad Company to you as trustees, to be held by you under said mortgage or deed of trust according to its terms and conditions; but hereby protesting and insisting that the mortgage of the La Crosse and Milwaukee Railroad Company to me, (commonly called a lease,) and bearing date the 26th day of September, 1857, under which I hold and have held possession, is a subsisting and valid encumbrance, and good against
150 all persons or parties claiming subsequent to the same. I surrender possession to you as having a prior lien or right only, and I retain all my rights and claims under my said mortgage, and shall, as soon as the amount due on said mortgage or trust deed for interest is satisfied, demand the redelivery of said road to me.

I desire that an immediate inventory of all movable property herewith delivered to be taken, and that you give me your acknowledgment of the receipt of the same.

Milwaukee, May 19th, 1860.

S. CHAMBERLAIN.

And on the same day came the said Milwaukee and St. Paul Railway Company, by Messrs. Emmons & Van Dike, its solicitors, and filed its cross bill, in the words and figures following, to wit:

To the judges of the circuit court of the United States for the district of Wisconsin:

The Milwaukee and St. Paul Railway Company, a corporation created by the laws of the State of Wisconsin, brings this its bill of complaint against the Milwaukee and Minnesota Railroad Company, a corporation created by the laws of the State of Wisconsin, and Selah Chamberlain, of Cleveland, in the State of Ohio, and a citizen of the State of Ohio, and thereupon your orator complains and says, that heretofore, in the year of our Lord 1857, the La Crosse and Milwaukee Railroad Company, a corporation then existing under the laws of the State of Wisconsin, became, as your orator is informed and believes, largely indebted to Selah Chamberlain, of Cleveland, in the State of Ohio, for work, labor, and services done and performed for said last-named company, and for moneys expended and materials furnished in and about the construction of said company's line of railroad between Milwaukee and La Crosse in the State of Wisconsin, and also in a large sum for damages accruing to said Chamberlain by reason of the non-performance on the part of the said last-named company of certain contracts between it an said Chamberlain for the repairs and construction of its line of railroad aforesaid.

151 And your orator further shows unto your honors that it is informed and believes, and so avers the fact to be, that the said La Crosse and Milwaukee Railroad Company being so indebted to the said Chamberlain in order to secure said Chamberlain in part of the indebtedness aforesaid, did, on or about the 27th day of September, A. D. 1857, duly execute and deliver to the said Chamberlain a certain contract of lease or mortgage, a copy of which is here-

unto annexed, marked Exhibit No. 1, and made a part of this your orator's bill of complaint, to the original of which, now in your orator's possession, when produced and proven your orator prays leave to refer.

And your orator further avers, upon information and belief, that under and in pursuance of said contract of lease or mortgage, and on or about the first day of October, A. D. 1857, the said Chamberlain entered into possession of the railroad and appurtenances therein mentioned, said road being then only partially completed; that said road was so far completed so as to permit the running of trains thereon in or about the month of November, 1858, from Milwaukee to La Crosse.

Your orator further shows unto your honors that it is informed and believes, and so avers, that the said Chamberlain continued to occupy and possess said railroad under said contract of lease or mortgage until in or about the month of May, A. D. 1860, when he surrendered the possession thereof as is hereinafter more particularly set forth.

And your orator further shows unto your honors that on or about the 2d day of October, A. D. 1857, and in order further to secure in part the said indebtedness to said Chamberlain the said La Crosse and Milwaukee Railroad Company executed and delivered to said Chamberlain its promissory note presently due and payable for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents; that the consideration of said note was the work, labor, and services done and performed, materials furnished, and moneys paid by said Chamberlain as aforesaid, which said promissory note was accompanied by a warrant of attorney for the entry of judgment, and whereon judgment was duly entered in the said district court on the said 2d day of October for the sum aforesaid, besides fifteen dollars and fifty cents costs; that said judgment now remains wholly unsatisfied and in full force, to the record whereof now remaining in this honorable court on the law side thereof your orator craves leave to refer.

152 And your orator further shows unto your honors that it is informed and believes, and so avers, that the said Chamberlain realized no revenue from the said railroad beyond a sum sufficient to pay a portion of the interest on the encumbrances mentioned in said contract of lease or mortgage.

Your orator further shows unto your honors that on or about the 18th day of May, 1860, there remaining due and unpaid interest upon the mortgage for one million of dollars, and which is mentioned and referred to in the said lease or mortgage, Green C. Bronson and James T. Soutter, the trustees in the said mortgage named, made demand of the said Chamberlain for possession of that portion of said railroad conveyed in mortgage for one million dollars to said Bronson & Soutter, upon which demand said Chamberlain made delivery of said portion of said railroad to said trustees; that said demand and surrender were evidenced by instruments in writing, copies of which are hereunto annexed and marked respectively Exhibits No. 2 and 3,

to the original of which when produced and proven your orator craves leave to refer.

And your orator further shows unto your honors that it is informed and believes that the said lease to said Chamberlain was subsequent in date to a certain other mortgage made by the said La Crosse and Milwaukee Railroad Company for the sum of four millions of dollars, and conveying that portion of its railroad extending from Portage City to La Crosse aforesaid, a distance of one hundred and five miles, upon which said last-mentioned mortgage proceedings of foreclosure were commenced in or about the month of December, 1859, in the said district court, wherein the said Chamberlain was made a party defendant, in which said foreclosure suit in or about the month of June, 1860, by an order of the said district court the said Chamberlain was removed from the possession of the said one hundred and five miles of road, and a receiver appointed who entered into possession thereof, and such proceedings were thereafter had in said foreclosure suit, a final decree of foreclosure was entered therein, and the said one hundred and five miles of road ordered to be sold to satisfy such decree, and that the same was thereafter sold under such decree, and the sale thereof confirmed by the said district court, to the record and proceedings in which said foreclosure suit now remaining in this honorable court your orator craves leave to
153 refer, when the matters and things alleged by your orator in reference thereto will more fully and at large appear.

And your orator further shows unto your honors, that that portion of what was formerly the La Crosse & Milwaukee railroad, extending from Milwaukee to Portage City, a distance of ninety-five miles, is ordinarily known as the eastern division of said railroad, and that portion extending thence westerly to La Crosse was ordinarily known as the western division of said railroad, and that the whole of said western division was included in and passed by the sale under said decree aforesaid.

Your orator further shows unto your honors, that it is informed and believes and so avers, that about the latter part of the year 1857 or during the early part of the year 1858, the said La Crosse & Milwaukee Railroad Company became insolvent and utterly worthless, and that it has now no property whatever, either in possession or expectancy.

And your orator further shows unto your honors, upon information and belief, that it has become and is now the equitable owner of the said lease or mortgage so as aforesaid executed to said Chamberlain, and of the indebtedness thereby secured, and also of the said judgment rendered in favor of and in the name of said Chamberlain, and that it has paid to the said Chamberlain full consideration therefor, and received from him an assignment of the said lease or mortgage and the said judgment, and that it so became the owner of said lease and judgment prior to the month of May, A. D. 1864.

And your orator further shows unto your honors, that in or about the month of May, 1864, the said defendant, the Milwaukee and Minnesota Railroad Company, exhibited in this honorable court its bill of

complaint, wherein was alleged in substance, among other things, the fact of the execution of the said lease or mortgage to said Chamberlain and of the rendition of the said judgment, and further alleging, among other things, in substance that the said lease or mortgage was given without consideration, and was made without legal authority, and that said judgment was without consideration, and that both the said contract of lease or mortgage and the said judgment were fraudulent and void, further alleging that it the said defendant had become the successor by purchase subsequent to the 27th day of September, A. D. 1857, of the said eastern division and fran-
154 chises of said La Crosse and Milwaukee Railroad Company, and prayed that the said lease or mortgage might be decreed to be void, and that the same and *and* the said judgment might be vacated and annulled. That your orator and the said Chamberlain are parties defendants to the said bill of complaint, your orator having become so by the order and direction of this honorable court subsequent to the filing of the said bill of complaint, and that your orator has appeared and made answer thereto, denying all of the allegations of fraud and want of consideration aforesaid, and averring and insisting upon the validity and good faith of the said lease or mortgage and the said judgment.

And your orator further shows unto your honors, on its information and belief, that there is now justly due of the indebtedness secured or intended to be secured by the said lease or mortgage, including the said judgment, (a consideration whereof formed a part consideration of the said lease or mortgage as aforesaid) to your orator the full sum of six hundred and sixty-one thousand four hundred and twenty-two dollars and twenty cents, besides aggregate interest thereon at the rate of twelve per cent. per annum since the 2d day of October, A. D. 1857.

And your orator further shows unto your honors, that the said eastern division is largely encumbered by mortgages prior in date to your orator's said judgment and the said lease or mortgage, and to an extent which, including the said indebtedness to your orator aforesaid, far exceeds the value of the said eastern division with all its equipments and appurtenances, and that said eastern division is now in the possession of a receiver appointed by the said district court of the United States in a suit instituted by the said Bronson & Soutter, trustees, to foreclose the said mortgage hereinbefore mentioned.

And your orator further shows unto your honors, that the said contract of lease or mortgage is in full force and effect, and your orator is advised that it is entitled to have same enforced by the judgment and decree of this honorable court.

Your orator is further advised that the judgment aforesaid constitutes an equitable lien upon said eastern division of railroad, and that it has no adequate security upon the said judgment at law, and can only obtain the fruit thereof by the interposition of this honorable court.

155 And your orator further shows unto your honors, upon information and belief, that at the time of the assignment by

said Chamberlain to your orator of the said judgment and the debt and claims aforesaid and contemporaneous therewith, said Chamberlain entered into an agreement with your orator, whereby the said Chamberlain covenanted and agreed that he would personally act, but for your orator's benefit, in the discharge and fulfilment of the covenants and undertakings by him to be kept and performed and in the said lease or mortgage contained; a copy of which said agreement so entered into with your orator is hereto annexed, marked Exhibit number 4, and made a part of this your orator's bill of complaint; to the original thereof when produced and proven your orator craves leave to refer.

And your orator further shows unto your honors, that this bill of complaint is exhibited by authority of the order of this honorable court, given in its order pronounced on the 17th day of April, 1865, in the cause instituted by the Milwaukee & Minnesota Railroad Company against Selah Chamberlain and this defendant as aforesaid, and in order to entitle this defendant to other and further relief than that to which it would be entitled upon its answer to the said bill of complaint.

To the end therefore that the said Milwaukee & Minnesota Railroad Company and Selah Chamberlain may full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged, and that as fully and particularly as if the same were here repeated, and the defendant specially interrogated thereto, and that the said lease and mortgage may be decreed to be a valid and specific lien or encumbrance upon the said eastern division of railroad, its appurtenances and franchises, and prior and superior to any right, interest, or claim of the said Milwaukee and Minnesota Railroad Company; and that the amount equitably due to your orator thereon may be ascertained and that the said eastern division of railroad with its franchises and appurtenances may be decreed to be sold and the proceeds applied to the payment of the sum which may be ascertained to be due to your orator as aforesaid; or in case this honorable court shall determine that your orator is not entitled to specific relief on the said lease or mortgage and to have the rights of the defendant foreclosed with respect thereto, then
156 that the said judgment may be pronounced to be a valid and subsisting security in favor of your orator, and that this honorable court will decree that the same creates an equitable lien and encumbrance on the said eastern division of railroad, its appurtenances and franchises, and that your orator may have applied during the pendency of this suit, the clean revenue of said eastern division of said road over and above what may be necessary to pay off and keep down elder encumbrances, towards the payment of its aforesaid debt, and that a receiver may be appointed, with the usual powers of receivers in like cases, to take possession of the said eastern division of road, to manage and operate the same, and apply the revenues thereof as aforesaid; and that said eastern division with its appurtenances and franchises may be decreed to be sold to satisfy said judgment; or that the present receiver may be continued for the benefit

of your orator; or that the said eastern division of said railroad may be delivered to the said Chamberlain to hold, use, and operate the same according to the terms and the true intent and meaning of the said lease or mortgage, but for the use and benefit of your orator and according to the intent and meaning of the said agreement on the part of said Chamberlain with your orator, or for such other or further relief in the premises as may be agreeable to equity and good conscience and as the court may see fit to give your orator, the premises considered, and as the nature of its case may demand.

May it please your honors to grant unto your orator the writ of subpœna, to be directed to the said Milwaukee and Minnesota Railroad Company and Selah Chamberlain, commanding them by a certain day and under penalty, to be and appear before this honorable court, then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity, and your orator shall ever pray, &c.

EMMONS & VAN DYKE,
Solr's for Complainant.
JOHN W. CARY,
WM. P. LYNDE, *of Counsel.*

157 DISTRICT OF WISCONSIN, *ss:*

Alanson Cary, of the city of Milwaukee, State of Wisconsin, being duly sworn, saith that he is the secretary of the Milwaukee & St. Paul Railway Company, the corporation in the foregoing complaint named, and the complainant therein, that he has read the said bill of complaint, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on the information and belief of the complainant, and as to those matters he has been so informed, and believes it to be true.

Sworn to before me, May 23d, 1865.

JAMES McFARLIN,
Commissioner Circuit Court U. S., Dist. of Wis.

158 *Exhibit No.* 1.

LEASE.

The La Crosse and Milwaukee Railroad Company to Selah Chamberlain:

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland, and State of Ohio, party of the second part, at the city of Milwaukee, and State of Wisconsin, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven:

The said party of the first part, in consideration of the undertakings and agreements of the said party of the second part hereinafter contained, hereby sells and conveys to the said party of the second part

all its personal property of every name, kind, and description in the State of Wisconsin, except all such personal property as is used in and is appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto so soon as the same can be conveniently done.

And the said party of the first part, in consideration of the said undertakings and agreements of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the thirtieth day of September, in the year 1857, for an indefinite term of time, to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances and franchises connected therewith or belonging or incident thereto, subject only to such prior superior liens as may or do exist thereon, and all existing contracts or agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part shall, from and after the said thirtieth day of September, and until this agreement shall be terminated in the manner hereinafter provided, operate so much of the said railroad as is ready for operation, and from time to time such portions of the same as shall be made ready for operation in such manner as will produce the largest amount of net receipts. That the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair, and that the said party of the second part shall receive and appropriate in the manner hereinafter provided all the receipts or income to be derived from the operation of said railroad.

It is further mutually agreed that the said party of the second part may, if it shall be found for the interest of said company, buy additional rolling stock, and appropriate the receipts of said railroad to the payment of the same.

The said party of the second part hereby undertakes and agrees that he will defray all the current cost and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the cost and expenses of operating the said railroad, and that he will, by the fifteenth day of every month, make out and deliver to said party of the first part, a correct statement exhibiting the total receipts and income of said railroad from all sources, during the next preceding month; also the cost and expenses, during such month, of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and the cost and expenses of operating said railroad, and also exhibiting the net receipts from said railroad, after deducting such cost and expenses of rolling stock and repairs and of operating, and that he will at any time, on demand of said company, or its president

or secretary, furnish to the person demanding the same a statement in detail of the items of which such statement is composed, and any officer or agent of said company, authorized by said company to do so, shall at any time have the right to examine the accounts of said party of the second part relating to the repairs of said railroad and rolling stock, and to the operating of said railroad.

And the said party of the second part further undertakes and agrees, that the said net receipts, after deducting the cost and expenses of repairs and operating as exhibited by the said monthly statements as aforesaid, shall be appropriated by him in the manner following, to wit:

1. To the payment of all coupons hereinafter to become due upon nine hundred and fifty thousand dollars of the bonds of said company, secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage City, bearing date June 13th, A. D. 1854, together with the sinking fund provided for by a supplemental mortgage or deed of trust, bearing date February 18th, 1856, except such of said coupons as are payable November 1st, 1857, and the sinking fund of twelve thousand dollars, payable November 1, 1857.

2. To the payment of all coupons hereafter to become due on one hundred and fourteen thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date on the first day of September, A. D. 1853.

3. To the payment of all coupons hereafter to become due on two hundred thousand dollars of the bonds of the city of Milwaukee, issued to the La Crosse and Milwaukee Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date the thirtieth day of July, A. D. 1854.

159 4. To the payment of all coupons hereafter to become due on one million of dollars of the bonds of the said railroad company, secured by mortgage or deed of trust on the railroad of said company, from Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of , A. D. 1857.

5. Whatever balance of said net receipts, as aforesaid, shall remain after the payment of the said coupons and sinking fund, shall be applied by said party of the second part in payment of the amount due, or hereafter to become due, to him by virtue, either of a certain contract between said parties, dated January twentieth, 1857, a supplemental contract between said parties, dated April 30th, 1857, or a certain contract between said parties, dated November 20th, 1856, or of a contract modifying said contract entered into between the said parties simultaneously with this contract, except such as may become due for work which shall be hereafter done, between New Lisbon and La Crosse, which is to be paid for from the means of the said company other than the same income.

And the said party of the second part further undertakes and agrees that whenever he shall have received from the earnings of the said

railroad such sum as by the terms and conditions of the aforesaid contract for the construction of the said railroad, bearing date respectively November 20th, 1856, January 20th, 1857, April 30th, 1857, and the one entered into simultaneously herewith, he is or shall be entitled to receive, or whenever at any time the said party of the first part shall pay to him any balance which at such time he shall be entitled to receive, according to the terms and conditions of the said contract, that he will surrender up to the said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appertaining thereto, in good repair, together with all estate, rights, privileges, franchises, and appurtenances connnected therewith, or belonging or incidental thereto, including all the railroad buildings, tenements, fixtures, and appurtenances constructed, and all rolling stock and other personal property put upon said road by said party of the second part, by virtue of this contract, and that he will re-convey and deliver to said party of the first part all personal property hereby conveyed, which shall not have been worn out, destroyed, or consumed in the construction or operation of the said railroad, and that he will convey and deliver to said party of the first part all personal property which shall have been acquired for said railroad in pursuance of this contract, or with the means derived from the receipts from said railroad, and that he will at such time deliver on the line of said railroad to said party of the first part fifteen thousand cords of wood, and that whenever the said party of the second part shall have received as aforesaid such sum as he shall be entitled to as aforesaid, or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void.

In witness whereof the said party of the first part hath caused these presents to be signed by its president and secretary, and its corporate seal to be hereunto affixed, and the same are signed by the said party of the second part.

La Crosse and Milwaukee Railroad Company—

(Signed) By BYRON KILBOURN, [L. S.]
President.
JACKSON HADLEY,
Secretary.

[L. S.] S. CHAMBERLAIN.

Signed, sealed, and delivered in the presence of—
H. L. PALMER.
THOMAS W. BEAVER.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Be it remembered, that on this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, before the subscriber, a notary public, residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who being by me duly sworn,

said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common and corporate seal of said company, and was affixed thereto by their authority; and that he as president, and Jackson Hadley as secretary, subscribed their names thereto by like authority; and on the same day before me personally appeared Selah Chamberlain, to me known to be the person described in, and who executed, the foregoing instrument, and acknowledged that he executed the same freely for the uses and purposes therein mentioned.

(Signed) H. L. PALMER,
Notary Public, Milwaukee County.

160 *Exhibit No.* 2.

MILWAUKEE, *May* 18, 1860.

Selah Chamberlain, esq.:

DEAR SIR: On the 21st day of Nov. last we demanded from you the possession of the railroad, rolling stock, and appurtenances conveyed to us by the mortgage or deed of trust of the La Crosse and Milwaukee Railroad Company, dated August 17, 1857, upon which demand we were placed in possession only of the receipts and earnings of the railroad. We now demand the actual possession of the railroad, rolling stock, and appurtenances conveyed by our said mortgage.

Respectfully,

GREEN C. BRONSON,
JAMES T. SOUTTER,
Trustees.

By their attorney in fact, PRENTISS DOW.

Exhibit No. 3.

Messrs. Green C. Bronson, James T. Soutter, trustees:

GENTLEMEN: In compliance with your demand of November 21, 1859, renewed on the 18th instant, I hereby surrender to you the eastern division of the La Crosse and Milwaukee railroad, (now known as the Milwaukee and Minnesota railroad,) with the rolling stock and appurtenances, covered by, or included in a deed of trust of the La Crosse and Milwaukee Railroad Company, to you as trustees, to be held by you under said mortgage or deed according to its terms and conditions; but hereby protesting and insisting that the mortgage of the La Crosse and Milwaukee Railroad Company to me, (commonly called a lease,) and bearing date the 26th day of September,
161 1857, under which I hold and have held possession, is a subsisting and valid encumbrance, and good against all persons or parties claiming subsequent to the same.

I surrender possession to you as having a prior lien or right only; and I retain all my rights and claims under my said mortgage, and shall, as soon as the amount due on said mortgage or trust deed for interest is satisfied, demand the redelivery of said road to me.

I desire that an immediate inventory of all movable property herewith delivered to be taken, and that you give me your acknowledgement of the receipt of the same.

S. CHAMBERLAIN.

Milwaukee, May 19, 1860.

Exhibit No. 4.

Whereas the La Crosse and Milwaukee Railroad Company were, on the 26th day of September, A. D. 1857, indebted to Selah Chamberlain in the sum of over five hundred thousand dollars, to secure the payment of which said company, on that day, by an instrument in writing, executed by said company and said Chamberlain, sold and conveyed to said Chamberlain all its personal property of every name, kind, and description, in the State of Wisconsin, except such as was used in and was appurtenant to the Watertown division of the La Crosse and Milwaukee railroad, and by said instrument in writing did also lease and let to the said Chamberlain from and after the thirtieth day of September, in the year 1857, for an indefinite term by him to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by the way of Horicon and Portage City, to La Crosse, together with its rights of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description, and all the rights, franchises, and privileges of said railroad company, to receive the tolls and income therefrom, and after paying interest on prior liens on said property, to apply all the rest and residue of said net receipts in payment of the said indebtedness of said company to said Chamberlain, and that when said indebtedness was fully paid said lease should cease and determine.

162 And whereas a large proportion of said indebtedness to said Chamberlain, amounting to about the sum five hundred thousand dollars, still remains due and unpaid to said Chamberlain, which said indebtedness said Chamberlain has sold and conveyed to the Milwaukee and St. Paul Railway Company by an assignment bearing even date herewith; and whereas it was understood and agreed that said Milwaukee and St. Paul Railway Company should have all the benefit and advantage of said lease for the purpose of securing the said indebtedness so remaining due:

Now, therefore, be it known that I, the said Selah Chamberlain, in case the possession of said road or any part or portion thereof shall at any time be decided or adjudged to belong to me, the said Chamberlain, under and by virtue of said lease, am held and bound unto the Milwaukee and St. Paul Railway Company to accept said position of lessee, take possession of said road or such portion thereof as I may of right take possession as such lessee under said lease, and hold and operate the same as in said lease provided, and after paying and discharging the trusts therein named, to pay over to the said Milwaukee and St. Paul Railway Company all the rest and residue of the net receipts arising from the operation of the said road. It being understood that said

Milwaukee and St. Paul Railway Company are to hold and save me harmless from all loss, cost, or damage in executing said trust, and that I am to have a reasonable compensation therefor.

In witness whereof I have hereto set my hand, this 27th day of June, A. D. 1863.

[SEAL.] S. CHAMBERLAIN.

Whereupon a subpœna was duly issued on said cross bill, returnable on the first Monday of July, in the words and figures following, to wit:

163 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

The President of the United States of America to the Milwaukee and Minnesota Railroad Company and Selah Chamberlain, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of July next ensuing, at Milwaukee, to answer to a cross bill of complaint exhibited against you in our said court by the Milwaukee and St. Paul Railway Company, and to do further and receive what our said court shall have considered in that behalf, and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Milwaukee and Minnesota Railroad Company and Selah Chamberlain, if to be found in his district, and due return thereof make.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the eighty-ninth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

EMMONS & VAN DYKE, *Solicitors.*

[50-cent rev. stamp, cancelled.]

It is ordered by our said court that the said Milwaukee and Minnesota Railroad Company and Selah Chamberlain, the defendants aforesaid, do enter their appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

164 JUNE 3, 1865.

This day came the marshal and made return of the subpœna issued on the cross bill herein, indorsed thereon as follows, to wit: "Served on the within named Selah Chamberlain, by delivering to him, personally, a copy this subpœna this 23d day of May, A. D. 1865, and served on the within named Milwaukee and Minnesota Railroad Company, by delivering to Austin Gunnison, a director of said railroad

company, personally, a copy of this subpœna this 29th day of May, A. D. 1865. D. C. Jackson, marshal, by W. S. Jackson, deputy. Fees, $4 92."

JUNE 9, 1865.

Stipulated testimony filed by complainant.

JUNE 12, 1865.

Stipulated testimony filed by complainant.

JULY 11, 1865.

This day came the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed its motion to vacate a portion of the order of this court made on the 17th day of April, 1865, allowing the Milwaukee and St. Paul Railway company to intervene as a defendant, and to file a cross bill, and to strike from the files the cross bill filed by said company, as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN and THE MILWAUKEE and St. Paul Railway Company, made defendant to this suit by order of the court.

Here in court comes the complainant in this cause, and moves the court here for an order vacating that part of the order of said court made on the 17th day of April, 1865, allowing the Milwaukee and St. Paul Railway Company to intervene in this cause, and strike off the cross bill filed by said last-named company in this cause, for the reason that said order is erroneous, and the Milwaukee and
165 St. Paul Railway Company and this complainant are each corporations created by the laws of the State of Wisconsin, and this court has no jurisdiction to hear and determine this cause between this complainant and said other company.

MATT. H. CARPENTER,
Sol. for s'd Complainant.

And on the same day came the said complainant and filed its demurrer to the cross bill, subject to said motion as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN and THE MILWAUKEE and St. Paul Railway Company, made def't by order of court.

THE MILWAUKEE AND ST. PAUL RAILWAY Company
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company.
} Cross bill.

The demurrer of the Milwaukee and Minnesota Railroad Company to the cross bill filed in this cause by the Milwaukee and St. Paul Railway Company, filed subject to the right to proceed to the hearing of a motion to dismiss said cross bill already filed.

The demurrer of the Milwaukee and Minnesota Railroad Company to the cross bill of the Milwaukee and St. Paul Railway Company:

This company, complainant in the principal bill of complaint in this cause, and defendant to said cross bill, by protestation, not confessing or acknowledging any of the matters in the said cross
166 bill to be true, in such manner and form as the same are therein alleged and set forth, doth demur thereto, and for cause of demurrer, showeth:

That this court has no jurisdiction to hear or determine the same in favor of the Milwaukee and St. Paul Railway Company, for the reason that the said Milwaukee and St. Paul Railway Company, and the said Milwaukee and Minnesota Railroad Company, are corporations each and both created by and existing under the laws of the State of Wisconsin.

Wherefore this defendant, in said cross bill, humbly prays the judgment of this honorable court whether it shall be compelled to make any answer to said cross bill.

MATT. H. CARPENTER,
Sol. and of Counsel for Mil. and Minn. R. R. Co.

I hereby certify that, in my opinion, the above demurrer is well founded in law.

MATT. H. CARPENTER,
Of Counsel.

DISTRICT OF WISCONSIN, *ss:*

Austin Gunnison on oath, says that he is a director of the Milwaukee and Minnesota Railroad Company, which company is a cor-

poration existing under the laws of the State of Wisconsin, that the foregoing demurrer is filed in good faith and not for delay.

AUSTIN GUNNISON.

Subscribed and sworn to before me, this 11th day of July, 1865.

JAMES McFARLIN.
U. S. Com'r, Dist. of Wis.

And said motion and demurrer came on to be heard, and was argued by counsel, and being concluded, the court took the same under advisement.

JULY 14, 1865.

This day came Francis Bloodgood, a commissioner of this court, and filed depositions taken by him in this cause. Whereupon it is ordered by the court that the same be, and hereby are, published.

167 JULY 17, 1865.

This day came the parties, by their counsel, and this cause came on to be finally heard upon the pleadings and proofs and stipulation that complainant file an answer and replication to cross bill, but not to delay the trial, and not to affect motion to strike off cross bill or the demurrer heretofore filed, and was submitted upon the testimony with leave to the parties to submit written arguments, the complainant to furnish court and opposite counsel with copy of argument by the 20th day of August, and defendant's counsel to serve copy of his reply upon opposite counsel by the first day of September next.

JULY 19, 1865.

This day came the complainant, by its counsel, and filed its answer and replication as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN *et al.*

THE MILWAUKEE AND ST. PAUL RAILWAY Company
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.
} Cross bill.

The answer of the Milwaukee and Minnesota Railroad Company to the cross bill of the Milwaukee and St. Paul Railway Company:

This defendant to said cross bill, saving and reserving to itself all and all manner of benefit of exception to the many errors, uncertain-

ties, and insufficiencies of the said cross bill, and protesting that this court has no jurisdiction to hear or determine the same, for answer thereunto, or unto so much and such parts thereof as is or are material to be answered unto, answering, says that it expressly denies

168 each and every allegation, statement, matter, and thing in said cross bill contained, save and except the matters stated and set forth in the bill of complaint in this cause; and this defendant here and now repeats and begs leave to refer to all the statements, allegations, matters, and things stated and set forth in said bill of complaint in answer to the said cross bill.

Without this, that there is any other matter, cause, or thing in the said cross bill contained material or necessary for this defendant to make answer unto, and not herein and hereby denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct.

The Milwaukee & Minnesota Railroad Company—

[SEAL.] A. C. GUNNISON, *President.*

MATT. H. CARPENTER, *Solicitor.*

Witness its seal above.

MATT. H. CARPENTER, *of Counsel.*

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE & MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN and THE MILWAUKEE & St. Paul Railway Company.

MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
THE MILWAUKEE & MINNESOTA RAILROAD Company and Selah Chamberlain.
} Cross bill.

Replication of the Milwaukee & Minnesota Railroad Company to the answer of the Milwaukee and St. Paul Railway Company to the bill of complaint in this cause:

169 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, and protesting against the right of said Milwaukee & St. Paul Railway Company to intervene in this cause for any purpose, for replication to said answer, saith that it, said Milwaukee & Minnesota Railroad Company, will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said Milwaukee & St. Paul Railway Company is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever

in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MATT. H. CARPENTER,
Sol. for Milwaukee & Minnesota Railroad Company.

AUGUST 4, 1865.

Stipulation in relation to testimony filed.

SEPTEMBER 22, 1865.

This day came the parties by their counsel, and on motion of Messrs. Emmons and Van Dyke, solicitors for the Milwaukee & St. Paul Railway Company, Mr. Carpenter objecting on the part of the Milwaukee & Minnesota Railroad Company, it is ordered that the complainant be permitted to submit proof of the alleged assignment of the judgment and lease or mortgage mentioned in the cross bill as having been made from Chamberlain to complainant.

And came the Milwaukee & St. Paul Railway Company by its counsel and presented to the court the original assignment of the judgment in favor of Selah Chamberlain against the La Crosse & Milwaukee Railroad Company, docketed October 2, 1857, for $629089 72 damages, besides costs of suit, which said assignment is dated June 27, 1863, and a copy of which is filed herein; and also presented an original paper bearing date the 27th day of June, A. D. 1863, made by Selah Chamberlain to the Milwaukee and St. Paul Railway Company, a copy of which is filed herein.

170 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law on the second Monday of April, A. D. 1866, at the city of Milwaukee in said district of Wisconsin; present and presiding, Hon. Samuel F. Miller, associate justice of the Supreme Court of the U. S., and the Hon. Andrew G. Miller, district judge. On the seventh day of the term, to wit, on the sixteenth day of April, A. D. 1866, the following proceedings were had, to wit:

THE MILWAUKEE & MINNESOTA RAILROAD Company *vs.* SELAH CHAMBERLAIN and THE MILWAUKEE & St. Paul Railway Company.	In equity.
MILWAUKEE & ST. PAUL RAILWAY COMPANY *vs.* THE MILWAUKEE & MINNESOTA RAILROAD Company and Selah Chamberlain.	Cross bill.

This day came the parties by their counsel, and this cause having been submitted to the court at the April term, 1865, upon the plead-

ings and printed argument of counsel, both on the original and cross bills, and the court having taken the same under advisement, and being now fully advised in the premises, is of the opinion that the Milwaukee & St. Paul Railway Company, and the Milwaukee and Minnesota Railroad Company, being both corporations existing in the State of Wisconsin, and organized under the laws and doing business therein, are not in law capable of litigating in this court the matters and things set forth in the cross bill of said Milwaukee and St. Paul Railway Company, and said cross bill is accordingly dismissed for want of jurisdiction, without prejudice.

And it appearing also that the lease of the La Crosse and Milwaukee Railroad Company to Selah Chamberlain, set forth in the original bill of the Milwaukee and Minnesota Railroad Company, and
171 which that bill prays to have set aside and declared null and void, was assigned by said Chamberlain to the Milwaukee and St. Paul Railway Company before said original bill was filed, and that said Chamberlain had then no other than a nominal interest in said lease, and the said Milwaukee and St. Paul Railway Company being then and now the real party in interest under said lease, and the court being of opinion that said last-mentioned company is an indispensible party to any proceedings to set aside and annul said lease, and that no such litigation can proceed in this court between said Milwaukee and Minnesota Railroad Company and said Milwaukee and St. Paul Railway Company in regard to said lease, the said original bill, so far as it prays relief concerning said lease, is hereby dismissed for want of jurisdiction, but without prejudice to any other suit which the parties may see proper to institute concerning the same matter in a proper court.

And the court being of opinion that the matters and things set forth in the pleadings and evidence in this cause do not establish such fraud or other wrong in the judgment recovered by said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company as justifies the relief prayed by said original bill in regard to said judgment, and also of the opinion that the decree in the case of Newcomb Cleveland against said Chamberlain referred to in said original bill does not conclude that question in this suit, it is therefore ordered and decreed as to said judgment that the bill of complaint be dismissed on the merits, and that complainants in the original bill pay the costs of the proceedings in said cause, and the complainants in the cross bill pay the costs in that cause.

SAM. F. MILLER, *Judge.*
A. G. MILLER.

MAY 11, 1866.

This day came the complainant by its counsel, and prayed an appeal to the Supreme Court of the United States from the decree rendered in this cause. Whereupon it is ordered by the court
172 that an appeal be, and the same is, allowed, and that said complainant execute a bond to the defendants in the penal sum of five hundred dollars, conditioned for the prosecution of said appeal, with sureties to be approved by the court, or a judge thereof.

JULY 9, 1866.

This day came the complainant by its counsel, and filed its bond on appeal, in the penal sum of five hundred dollars, with A. C. Gunnison and Josiah A. Noonan as sureties, with the approval of the district judge indorsed thereon, as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE & MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN and THE MILWAUKEE & St. Paul Railway Company.

THE MILWAUKEE & ST. PAUL RAILWAY COMpany
vs.
THE MILWAUKEE & MINNESOTA RAILROAD Company.
Cross bill.

Know all men by these presents, that the Milwaukee and Minnesota Railroad Company as principal, and A. C. Gunnison and J. A. Noonan as sureties, are held and firmly bound unto Selah Chamberlain and the Milwaukee & St. Paul Railway Company, in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Signed and sealed at Milwaukee, Wisconsin, this 9th day of July, A. D. 1866.

Provided, however, that this bond is given upon the following condition, that is to say: that whereas in the above-entitled cause on the 11th day of May, A. D. 1866, the said circuit court
173 made a final decree, and whereas the said Milwaukee & Minnesota Railroad Company then and there prayed for and obtained an appeal from said decree to the Supreme Court of the United States:

Now, therefore, the condition of this obligation is such, that if said last-named company shall make good its said appeal, and shall pay all costs that may be adjudged against it on its said appeal, then this obligation shall be void, otherwise of force.

The Milwaukee & Minnesota Railroad Company—
[SEAL.] By A. C. GUNNISON, *Director.*
[SEAL.] A. C. GUNNISON.
[SEAL.] J. A. NOONAN.

DISTRICT OF WISCONSIN, *ss:*

Albert C. Gunnison & J. A. Noonan, being first duly sworn, each for himself, says that he is worth more than five hundred dollars over and above all debts and exemptions.

A. C. GUNNISON.
J. A. NOONAN.

Subscribed and sworn to before me, this 9th day of July, A. D. 1866.

J. A. HUNTER,
Notary Public, Milwaukee, Wis.

Indorsed: "I hereby approve this bond and the sureties thereto, this 9th day of July, A. D. 1866. A. G. Miller, district judge."

NOVEMBER 3, 1866.

This day came the Milwaukee & St. Paul Railway Company by its counsel, and filed its petition for an appeal, with the allowance of an appeal indorsed thereon by the district judge, as follows, to wit:

Circuit court of the United States, district of Wisconsin.

THE MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
THE MILWAUKEE & MINNESOTA RAILROAD COMPANY and Selah Chamberlain. } Cross bill.

174 To the honorable judges of said circuit court:

Your petitioner, the Milwaukee & St. Paul Railway Company, by John W. Cary, its solicitor, humbly complaining, respectfully represents that it is injured and aggrieved by the decree of the circuit court in this cause made on the 16th day of April, A. D. 1866, dismissing your petitioner's cross bill.

Wherefore your petitioner prays an appeal to the Supreme Court of the United States from said decree, and herewith offers to your honors a bond according to law to be approved by you, and prays the allowance of an appeal, and a citation according to law, and your petitioner, as in duty bound, will ever pray, &c.

JOHN W. CARY.
Sol'r, and of Counsel for Petitioner.

Indorsed: "Nov. 3, 1866. Appeal allowed. A. G. Miller, district judge."

And also at the time of filing said petition, said petitioner filed an appeal bond in the penal sum of five hundred dollars, with Sherburne S. Merrill and David Ferguson as sureties, with the approval of the district judge indorsed thereon as follows, to wit:

Circuit court of the United States for the 7th circuit and district of Wisconsin.

THE MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
THE MILWAUKEE & MINNESOTA RAILROAD COMPANY and Selah Chamberlain.

Know all men by these presents, that we, the Milwaukee and St. Paul Railway Company, as principal, and Sherburne S. Merrill and David Ferguson, as sureties, are held and firmly bound unto the Mil-

waukee and Minnesota Railroad Company and Selah Chamberlain in the just and full sum of five hundred dollars, lawful money
175 of the United States, for the payment of which, well and truly to be made, we, and each of us hereby bind ourselves and our legal representatives firmly by these presents. Sealed with our seals and dated this third day of November, A. D. 1866.

Whereas the said Milwaukee and St. Paul Railway Company has appealed to the Supreme Court of the United States from a decree made in the above-entitled cause on the 16th day of April, A. D. 1866:

Now, therefore, the condition of this obligation is such that if the said Milwaukee and St. Paul Railway Company shall prosecute its said appeal to effect, and answer all costs if it shall fail to make good its appeal, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

The Milwaukee & St. Paul R'y Co.—

[SEAL.] By AL'X MITCHELL, *P't.*
[SEAL.] S. S. MERRILL.
[SEAL.] D. FERGUSON.

Attest:

A. CARY, *Secretary.*

Indorsed: "Nov. 3, 1866. This bond approved. A. G. Miller, district judge."

Whereupon a citation issued.

Citation returned indorsed:

"Served on the within named Milwaukee and Minnesota Railroad Company by delivering personally to John P. Green, treasurer, and Matt. H. Carpenter, attorney of said company, a copy of this citation this 7th day of November, A. D. 1866. Cassius Fairchild, marshal. By Wm. S. Jackson, deputy.

Service	$1 00
Travel	06
Copies	60
	4 66

The Milwaukee & Minnesota Railroad Company on the hearing of this cause, to maintain the issue on its part, offered and read in evidence the depositions of Hugh Lee and others, with the exhibits attached as follows, to wit:

176 In the circuit court of the United States in and for the district of Wisconsin.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
agst.
SELAH CHAMBERLAIN.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

Deposition of Hugh Lee, a witness produced, sworn, and examined in the above cause on the part of the complainant, before Francis Bloodgood, one of the examiners of said court, at his office in the city of Milwaukee, pursuant to rule 67 in equity, and the rules and practice of the court.

BEFORE THE EXAMINER, AT HIS OFFICE,
Milwaukee, June 8, 1865.

Present: Mr. Carpenter, for compl't; Mr. Emmons, for def't.

Hugh Lee sworn on part of the complain't, says:

1 ques. Where do you reside, and what is your age and profession?

Ans. In town of Beloit; age, 62 nearly; profession, civil engineer.

2 ques. Have you seen, and do you know the location of the La Crosse and Milwaukee railroad, so called?

Ans. I have, and do.

3 ques. Were you some time, and when, employed by the Milwaukee and Minnesota Railroad Company to make an examination, survey, and estimates of the am't of work done in constructing that road from Portage to La Crosse?

(The def't here enters an objection to the foregoing ques'n, and to any testimony solicited thereby, for the reasons, first, that the complainant has no legal competency or right to inquire into the consideration of the judg't and securities mentioned in the bill of
177 complaint; second, that the matter sought is irrelevant and immaterial.)

Ans. I was employed by that company in August, 1861, for the purposes mentioned, together with other matters. I was also employed to make measurements for certain work done between Beaver Dam and Portage.

4 ques. How long, and to what extent, and where have you practiced the profession of a civil engineer?

Ans. The length of time that I have been constantly employed as such is from 27 to 30 years. Have been so employed in the States of Maryland, Delaware, New York, and Wisconsin. I have been chief engineer of the Southern Wisconsin railroad; also of the Syracuse and Onondaga R. R., Skaneatelas and Elbridge R. R.; also the chief engineer of the Rock River Valley Union railroad. I was division engineer on the Chesapeake and Delaware ship canal; a portion of the time I had the charge of the entire work of that canal. I was resident engineer of the Ithaca and Owego railroad; resident engineer

on the eastern division of Auburn and Syracuse railroad. Made the preliminary survey of the Ogdensburg and Champlain railroad from Ogdensburg to Malone. A resident engineer of the Chicago, St. Paul, and Fond du Lac R. R., southern division, and made all the original surveys from Watertown to Chicago.

5 ques. Are you acquainted with the methods of locating and building railroads, and estimating the work done thereon?

Ans. I am, both as an engineer and as contractor. I have been a contractor.

6 ques. State now whether, after having been employed by the Milwaukee and Minnesota R. R. Co. as you have stated, you proceeded to make the survey, measurements, and estimates; and if so, state generally what course you pursued to ascertain the same.

Ans. I proceeded to make the measurements; commenced at La Crosse, in company with Robert Patten and Michael Lynch, civil engineers. We measured such portions of the work as could be
178 ascertained—the am't of work done, viz: The length of clearing and grubbing; length, depth, and width of ballasting, or what was claimed to be ballasting; rock excavation; earth excavation, at tunnel approaches; bank or supporting wall; one highway timber bridge; one cattle pass; computed the am't of masonry necessary for a roadway; arched culvert; measured the width and the height of the embankment at numerous places; measured the embankment across Beaver Dam pond; (this will require some explanation;) measured the length of all the arched culverts on the road, in order to ascertain the plan upon which the road was laid out, and whether the embankments were built to sub-grade or final grade; measured the distances to various foot-slopes stakes found standing along the line of the road; was engaged in the field twenty-two full days; made diagrams of all the rock work, and also the earth work at tunnel approaches; we also attempted to measure the extra hauling, but never computed it; the reason why can be explained hereafter.

7 ques. Were the measurements made by you of this work sufficient to enable you to make the computations and estimates of the work done from Portage to La Crosse?

Ans. They were. I will explain that at the west approach of the tunnel a large amount of work had been recently done, still the measurements made enabled us to arrive at the aggregate am't done, actual am't done by all the parties.

8 ques. Did you hear the testimony of Mr. Chamberlain to-day as to the contracts under which this work was done?

Ans. I did.

9 ques. Had you copies of these contracts before you at the time you made your measurements and estimates?

Ans. I had.

10 ques. Assuming that this work was done in 1857 and 1858, in your opinion, could the measurements be so made, at the time
179 you say you made your measurements, as to arrive at the correct result as to the am't of work done?

Ans. The work could then be measured with as much accuracy as

it ever could have been measured. It could not have been measured previous to the completion of the work from the field-notes, the original field-notes, on acc't of the road being graded to no particular plan. The width of the road bed in rock excavations varies from thirty feet to sixteen feet, and under; the slopes vary from a matter of two or three inches in the foot, perpendicular rise, to eighteen feet in seven feet rise. The side walls and the rock excavations are of all conceivable shapes and forms, and consequently could not have been measured previous to the work being done.

11 ques. Do you know Mr. Wm. R. Sill, the engineer of the Milwaukee and St. Paul Railway Company?

Ans. I do. I was introduced to Mr. Sill at La Crosse on the day we arrived there. He assisted us in making the measurements from La Crosse to a point near Linden. He stated that he was not sent on by the railroad, but came on out of professional pride as an engineer, there having been so much said about the work on the road. He left us at a point near Linden to go to Milwaukee, as he stated, and returned when we were about two and half miles east of Kilbourn City. We then were about finishing the rock work. He asked me to furnish him some of our field-notes of the rock work west of Kilbourn City; some of the heavy rock work, which I did. Mr. Sill and I agreed in every respect in regard to the measurements of the rock excavations, with one exception. He stated he thought I was liberal, with the exception where we disagreed. This was at a point a short distance east of Manston. There was a piece of excavation of yellow sand in the bottom of the road bed one and a half foot in depth, and three hundred feet in length, which would contain about three hundred cubic yards. Mr. Sill thought that work should be classified as rock. I made a memorandum of it at the time, stating I have done as hard work as that for ten cents a yard. I dug
180 into it myself with a spade. This was the only instance in which we disagreed. Mr. Sill stated at the time that he came back from Milwaukee that the rock excavation could be measured just as well as it ever could; that there was no difficulty in arriving at it.

(The deft's counsel enters a special objection to this ansr. for this reason, that it is not responsive to the interrogatory put, and that the whole substance of the statement was volunteered by the witness.)

The examiner, at the request of the complainant's counsel, certifies, that after the witness had given the first six or eight lines of his ansr. he stopped, when the complainant's counsel told him to go on without further question; that the witness after a little while stopped again, when the complainant's counsel again directed him to go on without further questions, when the witness continued and finished his answer. That during the whole time the witness was thus answering, the deft's counsel sat by and made no objection to this course of examination.

12 ques. Was Mr. Sill with you, and did you and he consult or confer together, as stated by you in the testimony which you gave without any question?

Ans. Yes.

13 ques. In making your estimates, did you make them with the view of giving as much as the contractor was entitled to, or in other words, did you resolve any doubts that might occur for or against the contractor? State how you did it in this respect.

Ans. We made a full and liberal measurement. We subdivided the several rock excavations into transverse sections of such lengths as would give a fair average of the work. We ascertained the form of each transverse section by taking the difference in each at those points in the cross section where the plane of the road bed intersected the slopes, and where the latter intersected the surface of the rock. We then measured the horizontal top-width, the bottom width, and also the base of the slopes, and wherever the slopes abruptly
181 changed, as they frequently do, or where or offsets were left upon the sides of the excavations, as is frequently the case, we took additional measurements, so as in all cases to have sufficient elements for an accurate computation of the work. And whenever a cross section happened to come opposite projecting points of rock, or a narrow place in the road bed, we took the width in front or rear of such cross section, so as to get the longest width it would give. We adopted a somewhat different plan in measuring the earth work at the tunnel approach on the west side, which was equally accurate. We took the height from the line of collimation at every five feet across the entire width of the road.

Adjourned to 10 a. m. June 8, 1865, when the parties appeared as before, and the witness Lee continued his testimony as follows:

14 ques. You state that some explanation will be necessary in regard to the embankment across the Beaver Dam pond or lake, also in regard to the west approach of the tunnel; explain.

Ans. The explanation in regard to the filling in of Beaver Dam pond or Fox lake, was in regard to the mode and manner at which we arrived at the quantity, and I will refer to book "B" of diagrams of that work. (Note, said book is here introduced in evidence by the complainant, and is at its request marked "Book B of diagrams," to be attached to or returned to the court with this deposition.)

15 ques. Explain what this book marked "Book B of diagrams," contains, by whom it was made, and all about it?

Ans. It contains a profile of the embankment, and diagrams of the several transverse sections, showing the depth of the water each side of the embankment, the depth of the muck, heighth of embankments, and top width and bottom width at the surface of the marsh, (the bottom width is only at the surface of the marsh.) We measured two thousand feet of embankment. We procured an iron rod fif-
182 teen or sixteen feet in length, and about three-eighths of an inch in diameter, and also a boat. We sounded the depth of the marsh on each side of the embankment about thirty feet outside the foot slopes; which is represented in the diagram.

In computing the quantities, we allowed that the embankment had displaced the entire amt. of muck under its base, which could not have been the case. That is, we allowed that the embankment had displaced all the muck enclosed between perpendicular lines

drawn from the foot slopes of the embankment as represented in the diagram. This book was made from the field-notes of our survey, and is a correct representation of what it purports to represent. I stated that it could not be that it had displaced this quantity, because there was no upheave of the earth outside the foot slope that we could discover, and because the road was exceedingly elastic when the trains passed over it. We made twenty-seven thousand two hundred and sixty-six cubic yards of material, according to the measurement as above described, which I think would be too much by eight or nine thousand yards. But we carried it into our estimate, at the figures we made by this calculation.

The explanation in regard to the western approach of the tunnel is short. In approaching the tunnel we found quite a large amt. of earth or yellow sand dumped upon the out edges of the embankment, and not levelled down. It appeared to have been recently done, when we arrived at the west approach of the tunnel we found that it was graded in a workmanlike manner in the sand excavation, entirely different from any other part of the road bed. The material was the same as that which we found dumped along the side of the embankment, and concluded that a considerable amt. of work had been recently done at that place.

16 ques. State whether or not the road bed of the western division was built according to the contract, and as laid out by the engineers, and whether it is properly built; describe it fully.

Ans. The work from the various foot slope and top slope stakes which we found, and also the arched culverts, showed that
183 the work was properly and well laid out, and of the width of road bed as mentioned in the contract.

The road bed was not completed in the manner in which it was laid out. The embankments are much narrower, and built in all cases where found foot slope stakes, or arched culverts, to sub-grade only. The embankments were laid out for a top width, at sub-grade of fourteen feet, with slopes of one and a half foot base, to one foot perpendicular rise. The embankments as built have a top width at sub-grade, over the portion of road ballasted, as well as not ballasted, of nine feet and under. The slopes are generally one foot base to one foot perpendicular rise. In some places they had driven down black oak poles, of three to five inches in diameter, a distance of ten to twelve feet longitudinal, and behind those poles were placed other black oak poles to retain the earth. We found in some places where they had built up sod embankment nearly vertical and placed the base of the embankment between those sods. We found foot slope stakes marked with the station of the road, and the filling required for the embankment standing thirteen feet outside of the embankments, and at other places from three to four feet outside of the embankments, according to the heighth of the embankment. In all cases the heighth of the embankment corresponded with the filling marked upon the stakes, within one-tenth of a foot and under, which showed that it was properly laid out. The length of the arched culverts

showed that the embankments above them, resting upon them, were at sub-grade only.

(Ques. Just explain here how that is shown.)

The length of a culvert between the parapets depend upon the width of the road at sub-grade and the length of the embankment.

17 ques. Did you at that time have before you the estimate of E. W. Woodward on this work, of Oct. 4, 1857?

Ans. Mr. Fleming had a book which I paid no attention to.

18 ques. Have you since examined the estimates of Woodward?

184 Ans. Yes. I examined it after we had made our estimates.

19 ques. Is there any work allowed by the Woodward estimate which, in your opinion, should not have been allowed under the terms of the contract? If so, what?

Ans. There is what is called bank wall—supporting wall.

20 ques. Go right on here, and explain what sort of a wall that is, and why it is improper to allow it.

Ans. We found three pieces of bank wall on the line of the road, which was built to save material and labor in making the embankment, and for no other purpose that I could see, and which it does to a very considerable am't. The bank walls are very roughly laid; seemed to have been made by common workmen; mechanics could never built such wall; but they answer all the purpose for which they were designed. We allowed this in our estimate. We took into acc't the bank walls. We found bank wall two and one-tenth miles west of Kilbourn City—that is, measuring from the bridge across the Wisconsin river, and also two miles east of Kilbourn City, by measurement east from the bridge.

21 ques. Did "Book B of diagrams" relate to anything but the work of Beaver Dam lake, or pond?

Ans. It does not.

22 ques. Is there a bridge over this embankment? and was any allowance made in the estimates on that acc't?

Ans. There is a bridge of about eighty or ninety feet, and we neglected to make any deduction for the opening for this bridge.

23 ques. Did you compute the extra haul on the work? and if not, why not?

Ans. We made measurements for the extra haul, but never
185 completed it, for the reason that it is evident that a large am't of work had been done since the contract was accepted. We saw the construction cars at work widening the embankments while we were making our survey. At La Crosse a trestle bridge had been originally made, now filled in with earth. We could see the caps and the posts of the bridge. We did not calculate the extra haul, because it was impossible to separate what Mr. Chamberlain had hauled from what had been subsequently hauled. There was another reason. Between Toma and Lisbon there are about four miles that had evidently been done by construction cars, most of the way through a pine swamp. The timber, within the bounds of the road bed, was put under the road bed, or corduroyed, and the embankment placed

over it, of an average depth of about two or three feet. The material appeared to be of the same character as that found at the tunnel approaches, and we were informed that it came from there.

24 ques. Are the embankments on the western division graded to ballast, or sub-grade?

Ans. To sub-grade.

25 ques. What shows this?

Ans. The slope stakes are found, and the length of the arched culverts.

26 ques. Were the materials used for ballasting proper for that purpose on the western division?

Ans. They were not, with the exception of about three and a half miles between Tomah and Lisbon.

27 ques. Now explain what it was, and why it was not proper?

Ans. I consider that gravel, or broken stone, are the only proper materials for ballasting a railroad. The objects of ballasting a road with gravel, or broken stone, is to allow the falling water to percolate freely, and run off through the interstices of the gravel or stone, to prevent dust in the passage of trains, and to give a uniform
186 elasticity or solidity to the road bed. With the exception of the three and a half miles spoken of, it was ballasted with sand, or with sand mixed with loam. In consequence, the point ties settled from one and a half to two inches on the passage of the trains, causing great wear and tear to the T rail and rolling stock. Many of the T rails, at their ends, the propelling part of the T portion, was broken or fractured off for a distance of from four to twelve inches. I saw no such fractures when the road was properly gravelled, neither upon this road nor any other that I have ever seen.

There is another reason that this sand ballast was improper. It was so very light, or fine, making the road so elastic, that it dragged the T rails apart at their ends, from an inch to an inch and a half, and they had put in wooden plugs to the depth of the T rail, one end resting upon the chair, and the other end coming up to the surface of the rail. Another reason why sand is not a proper material for ballast, when the road bed freezes up in winter, the sand being wet and moist, the road bed becomes solid and rigid as a rock, and being frequently out of adjustment at such times, the rigidity, and this being out of adjustment, causes great wear and tear to the rolling stock, and a greater liability to break the axles during extreme cold weather.

28 ques. Could proper material for ballasting this road have been found along the line of the road, and at a reasonable distance? State.

Ans. They could. There is an extensive gravel bed eleven and one-fourth miles west of Lisbon, called Baker's cut. It is a chocolate colored, angular gravel, good for ballast. There are also extensive beds of gravel between Portage and Beaver Dam.

We made the entire distance from Beaver Dam to Portage, by measuring the entire distance of the road bed, thirty-four and one-fourth miles. If this portion of the road had been ballasted with gravel, the average haul would have been eight miles. The distance

from Portage to Kilbourn City is seventeen and a quarter miles. If this portion of the road had been ballasted with gravel, obtained from pits between Portage and Beaver Dam, the average haul would
187 have been eighteen and a half miles. The distance from Kilbourn City to Baker cut, where extensive gravel beds occur, of the chocolate kind, is thirty-seven miles, and the average haul would be eighteen miles and a half.

The distance from Baker cut to the tunnel is ten and a half miles, and the average haul would have been five and a quarter miles if this portion of the road had been ballasted with gravel from Baker's cut.

29 ques. Would this have been an unusual haul for ballasting on roads in Wisconsin?

Ans. No.

30 ques. What was the aggregate length of the embankment on the western division? and how much is it different, in consequence of not being constructed according to the contract, and as the work appears to have been laid out by the engineers?

Ans. The aggregate length of the embankments, from Portage to Tunnel, is forty-seven and six one-hundredth miles. The average height of this embankment, for the entire distance, as near as we could arrive at it, from the notes we had, is three and a-half feet, and it is deficient about four thousand seven hundred and fifty-eight cubic yards per mile, or two hundred and twenty-four thousand nine hundred and eleven cubic yards.

The aggregate length of the embankments from Tunnel to La Crosse is about forty-four miles, or three-fourths of the entire distance. We did not measure the entire distance of the embankments between Tunnel and La Crosse, but did between Tunnel and Portage. The average height of the embankment, from Tunnel to La Crosse, as near as we could arrive at it from our notes, would be about four feet, and the deficiency per mile would be about five thousand five hundred and ninety cubic yards, or two hundred and forty-five thousand nine hundred and sixty cubic yards in all.

31 ques. What would it have been worth, per cubic yard, to have supplied this deficiency at that time? in 1857 and 1858.

Ans. About twenty cents per cubic yard, including the extra
188 hauling, which would have to have been done on that road.

Recess taken till 2 p. m.

Examination continued:

32 ques. What did you find the top width of excavation at the west tunnel approach?

Ans. We found it of various widths, according to the depth of excavation; some places as high as one hundred eighteen feet and seven-tenths.

33 ques. What is the average number of cubic yards per mile of work upon the western division, as laid out by the engineers?

Ans. From La Crosse to the tunnel, it would be about seventeen

thousand two hundred cubic yards. From the tunnel to Portage about fourteen thousand five hundred. It would not exceed this. If any variation it would be under. This is exclusive of tunnel approaches.

34 ques. In case of those slope stakes, which you found on the line of the road, were they in their places in which they were originally set, as shown by the mark on the stake and the height of the embankment?

Ans. We tested several of them, and found they were properly set for a road of fourteen feet top width at sub-grade, with slopes of one and a half foot base, to one foot perpendicular rise.

35 ques. At how many places on the line of the western division of this road does the excavation encounter rock?

Ans. There are forty-one (41) excavations between Portage and La Crosse, having more or less rock in each, the diagrams of which are all represented in a book which I produce.

(NOTE.—The complainant here introduces in evidence the said book introduced by the witness, which is marked Book A of dia-
189 grams," and is to be annexed to, or returned with, this deposition,) viz: five excavations between Portage and Kilbourn City; twenty between Kilbourn and Linden; six between Linden and Lemonweir; one between Lemonweir and Manston; one between Manston and Lisbon; one between Lisbon and Tomah; two between Tomah and Greenfield; one at east approach of tunnel; one at west approach of tunnel; three between west approach of tunnel and La Crosse.

36 ques. Describe here fully what this book, marked A, of diagrams contains.

Ans. It contains the diagrams of the rock excavations, together with the cubical quantities, showing the position of the rock as it lay in the road bed. Some places you will find as many as three stratas in one cross section, with stratas of sand intervening, and the depth of those stratas marked. It also shows the manner in which the road bed was excavated, how far to the right or left of the foot slopes on each side.

37 ques. Do you find this excavation of rock uniformly on one side of the road bed, so as to be available for building a double track, or it is some time on one side of the road bed, and some time on the other?

Ans. We find in some places that the road bed has been excavated unnecessarily wide for a single track. The unnecessary width being sometimes on the north side and sometimes on the south side of the road bed. I refer to pages 100 and 101 of Book A of diagrams, and also to pages 33, 37, 41, 43, and 44. There are other places where it is wider than necessary—a good deal.

38 ques. In the estimates made by you, did you calculate and include this unnecessary work?

Ans. We did.

(NOTE.—The complainant here offers in evidence in connection with this deposition, both books of diagrams, marked Book A of diagrams and Book B of diagrams.)

190 39 ques. What was the indication from the natural surface, at the tunnel approaches, as to whether the excavation would be of earth or rock, and how was it laid out and originally commenced?

Ans. The indication, wihout having test pits dug, would be that it was earth and sand. We found slope stakes standing at both approaches of the tunnel, and laid out for common earth excavation. After the rock was encountered then they made large offsets.

40 ques. Will you refer to the diagram and explain in words how the excavation was made in this particular?

Ans. The excavation in west approach of tunnel, represented on pages from 11 to 29, inclusive, in Book A diagrams, was done in a workmanlike manner, where no rock occurs; where rock occurs, the width is unnecessarily wide. The east approach of tunnel represented on pages from 33 to 60, inclusive, in Book A of diagrams, is left in a rough and irregular state.

41 ques. Were these excavations commenced for a slope of one and a half to one, from the natural surface, to the level of the road bed at sub-grade?

Ans. The stakes so indicate it, and the excavation shows it. The common earth excavation in the west approach shows that the work was laid out for a road at sub-grade of twenty feet width.

42 ques. In all the measurements and estimates made by you, earth as well as rock, did you estimate all the work done whether necessary or not?

Ans. All of it.

43 ques. Will you describe now the character of the excavation at those tunnel approaches, and state what it was worth to make them per yard, irrespective of any contract price?

191 Ans. The earth excavation, what we call common excavation, was loose, fine sand; what we termed solid rock excavation, was soft, crumbly, white or gray sandstone, totally unfit for building purposes. What we termed loose rock excavation was thin stratas of rock with sand interspersed between the stratas, which we could not separate, but allowed it all as loose rock. A large am't of the work has been deposited in spoil banks, and in other embankments near the approaches. I could not say what the extra haulage would have been over and above five hundred feet; probably about five hundred feet extra haulage. The earth or sand excavation would be worth from twenty to twenty-one cents a cubic yard, including extra haulage. The solid rock fifty-five cents per cubic yard, including the extra haulage, and the loose rock thirty-five cents per cubic yard, including the extra haulage. I think five hundred feet would certainly cover the extra haulage.

44 ques. What, in your opinion, was the ballasting then worth per cubic yard, considering the material used, irrespective of any contract price, the company furnishing the cars and locomotives?

Ans. A fair price for the sand ballast for those times would be twenty cents per cubic yard, and for that portion ballasted with gravel twenty-five cents per cubic yard.

45 ques. You say that there were many things which you could not accurately measure at the time you made your survey; now, in regard to the things you did measure and estimate, are you able to say whether they were accurately ascertained and estimated?

Ans. Yes, they were carefully and accurately measured, with a view to be sure and get the full am't of work done.

46 ques. Have you made out a statement, showing in parallel pages your estimate, and the E. W. Woodward estimate, Oct. 1st, 1857, of these portions of this work of which you were able at that time to make accurate measurements and estimates? If so, will you present it to the examiner?

192 Ans. I have, (and now present it to the examiner;) but there is one item at the tunnel approaches which is Mr. Woodward's estimate on both pages, and I here make this remark; we then found a different state of things at the tunnel approaches for our estimates, and our estimates for tunnel approaches is contained in the left hand page. On the outside of this paper is a statement of the aggregate length of the embankments from La Crosse to the tunnel, and from the tunnel to Portage, with the deficiency in consequence of the road not being built according to the contract.

(NOTE.—Complainant here offers in evidence said statement marked Exhibit No. one, to be annexed to this depositon.)

47th ques. Are the several statements and calculations on the left-hand page of this statement and on the outside thereof, correct as to the several matters they purport to state?

Ans. I believe they are.

48 ques. On the left-hand page of this statement you estimate twenty-seven thousand two hundred sixty-six cubic yards in the embankment across the Beaver Dam pond, and add "probably about 18,000 cub. yds. in this emb'k't." Explain what you mean by this addition to this estimate.

Ans. That was in consequence of our taking it for granted that the embankment had displaced the entire am't of muck under its base between vertical lines from the foot slopes of the embankment to the bottow of the muck, but in my opinion it was that much too much. I regard the value of doing this work at twenty cents per cubic yard.

49 ques. What in your opinion was the grubbing and clearing worth per mile?

Ans. One hundred and fifty dollars.

50 ques. What in your opinion was it worth to excavate the solid rock from Portage to La Crosse?

193 Ans. That would vary from (40) forty to (75) seventy-five cents a cubic yard; and the loose rock for the same would be worth twenty-five to thirty; a good deal we estimated as loose rock was sand, but we could not separate it.

51 ques. Have you put down here (in this statement) what you regard as a fair price for the things which make two items in the ac., $650 00, $466 60?

Ans. The first item embraces a timber bridge and one cattle pass

near Portage City, and also temporal road crossings and cattle guards along the line. I considered those three items worth six hundred and fifty dollars. I measured the timber and plank in the timber bridge and cattle pass, and considered those two items worth $300; the road crossings and cattle guards I did not count the number of, but think that $300 dollars would build them. The other two items are bank wall; the one piece containing one hundred and sixty-six cubic yards, very roughly laid, I consider worth a dollar a yard for laying. This was to save material and labor in building the embankment, and the material for the wall would or could have been had there. The other piece of bank wall contained two hundred and forty and a half cubic yards, and was laid with large boulders obtained from the excavation, somewhat better laid than the other, and I consider that worth one dollar and twenty-five cents per cubic yard. This piece of masonry was also to save material and labor and for no other purpose.

52 ques. Was this entire survey and the calculations, estimates, and diagrams, drawn by you and under your direction and supervision?

Ans. Yes; most of the diagrams were made by myself; the calculations were all made by me, and have been verified by others.

Adjourned to 10 a. m. June 9, 1865, when the parties appeared as before, and the examination of the witness was continued:

53 ques. Assuming that Chamberlain did sixty-four thousand cubic yards of excavation at tunnel approaches as estimated by
194 Woodward, and that all the rock excavations which was shown at the time you made your survey was done by Chamberlain; please state here, and now, what am't of that excavation would have been rock and what am't earth; and state what would have been a fair price for doing each kind of work.

Ans. There would have been twenty-two thousand six hundred forty-four cubic yards of rock excavation, and forty-one thousand three hundred and fifty-six cubic yards of earth excavation. A fair price per cubic yard for those kinds would have been fifty-five cents per cubic yard for the rock excavation, and twenty-one cents per cubic yard for the earth excavation. This includes any extra haul that there might have been.

54 ques. At this rate what would the rock excavation have amounted to, and what the earth?

Ans. The rock excavation would have amounted to twelve thousand four hundred and fifty-four dollars and twenty cents $12,454 20

The earth excavation would have amounted to eight thousand six hundred eighty-four 76-100 dollars 8,684 76

Total 21,138 96

55 ques. What is the difference betwen this am't and the am't estimated by Woodward?

Ans. The difference is one hundred and six thousand eight hundred and sixty-one dollars and four cents, ($106,861 04.)

(NOTE.—All the foregoing testimony was, for convenience and to save a multiplicity of objections to the interrogatories as they were propounded, taken subject to the right to enter general objections at the foot of the direct examination, and the objections of the defendant are now here accordingly entered, viz:)

1st. That the complainant has no right to inquire into the consideration of Mr. Chamberlain's judgment.

2d. The complainant is not a creditor within the meaning of
195 law entitling it to question the consideration of good faith of prior encumbrances, nor can it lawfully attack and encumbrance created or suffered by the La Crosse and Milwaukee Railroad Co. for fraud as against creditors.

3d. That even if the complainant can legally as a creditor attack for covin or fraud, the evidence offered and adduced is not competent, and does not tend to the conclusion alleged.

4th. The witness has testified to mere opinions and conclusions of law, and has sought to give construction to written instruments and documents.

5th. Because the witness's testimony in many respects is based on hearsay.

6th. Because all the testimony of the witness is irrelevant and incompetent.

7th. The def't objects for all the foregoing reasons to "Book A of diagrams," and "Book B of diagrams." and to Exhibit No. one introduced in evidence by the complainant.

The defendant, by consent, reserves the right to make and apply these objections specifically, at the hearing, to any portion, or the whole of this witness's testimony; and subject to the foregoing, the cross-examination was proceeded with.

Cross-examination:

1 c-ques. How long have you resided in Wisconsin?

Ans. Twenty-three years and upwards.

2 c-ques. What has been your occupation during that time?

Ans. Between nine and ten years of that period. civil engineer; I have been surveying and engineering a portion of the time; engineering mill-races; how long I have been at these last occupations, I
could not say; have been at different places; and the balance
196 of the time I have been farming.

3 x-ques. You mentioned in your direct examination in answer to the 4th interrogatory, that you had been employed on various railroads and works as an engineer in different capacities. I want you to tell us how long, and when you were so employed on each work.

Ans. I commenced engineering in 1821, or in 1822. I cannot say positively which year, I think it was in 1822, on the Chesapeake and Delaware ship canal. I was engaged upon that work until 1830 or 1831, I think 1831. I went there to get employment as an engineer. There was no opening for me in that capacity. I engaged as a rodman, and was in that capacity about one week, was promoted to assistant engineer. I can't say how long I was in that capacity before

I was promoted to division engineer, but was engaged on that canal for the length of time I have stated.

From there I went into the Ithica and Owego railroad; was engaged as assistant engineer by John Randall, jr., the chief engineer. I was there five or six years, and during part of the time had the entire charge of the work in consequence of the absence of Mr. Randall; I acting for him.

From there I went on to the Auburn and Syracuse R. R., Edward F. Johnson, chief engineer. I was engaged as division engineer on that road. I had the charge of the eastern division; made the location from Ellridge to Syracuse; made all the final estimates; all the monthly estimates, with the aid of my assistants. And about two years of the time in the absence of Edwin F. Johnson, who was appointed on the New York and Erie railroad, I had charge of the entire work.

The company appointed me to pay off and disburse moneys to the contractors, and I declared contracts abandoned, had them re-let, or employed forces by the day to finish portions of the work when contracts had been declared abandoned. I was five or six years upon that road.

I was about two years chief engineer of the Syracuse and Onandaga, and during the same time I acted as deputy surveyor of the State of New York, drawing a salary in both capacities. Was ap-
197 pointed such by the surveyor general. I was then engaged to survey the Ogdensburg and Lake Champlain railroad from Ogdensburg to Malone, by Edwin F. Johnson, and made the preliminary surveys of two routes beween those places, occupying about a year of time.

I was again employed by the Auburn and Syracuse Railroad Co. as their agent, and at the same time I was engaged by Skeneatlas and Ellridge railroad, and made the surveys and estimates preparatory to the letting of the work. The company advertised two different times to receive proposals for doing that work. They could get no propositions as low as my estimates, and proposed that I should do the work at my estimated prices, which I did, entering into contract, and they appointed another engineer. I was engaged there about a year and a half as engineer and contractor.

The next work I was engaged upon was the Rock River Valley Union railroad; was engaged as chief engineer, (this was in Wisconsin.) At the same time I was chief engineer of the Illinois and Wisconsin. This was one enterprise but two corporations. I was thus employed nine or ten years, a part of the time as chief, and part as division engineer. I will give the reason why I went out as chief engineer. Mr. Edwin F. Johnson was appointed chief engineer for financial reasons, he being better known at the money marts.

4 x-ques. Do you think that in August and September, 1861, you could make as accurate an estimate of the character and quantity of work which had been done upon the L. Crosse and Mil. R. R. during the summer, and prior to the first day of Oct., 1857, as the engineers

in charge of the work at the time it was done; and who made their estimates from time to time, as the work progressed?

Ans. Those portions of the work which we measured could be estimated, and the character of the work classified with as much accuracy as they ever could have been made, prior or subsequent to the completion of that work, except the embankment across Beaver Dam pond or Fox lake, the proper place to have measured the
198 quantity that went into embankment would have been the borrowing pit. And also with the exception of an arched roadway culvert. We had no means of ascertaining the dimensions of the abutments; the quantity of masonry in this culvert according to our estimate is not embraced in the estimates furnished to this court.

5 x-ques. Do you assume in your last answer that the engineers referred to in the preceding interrogatory also conducted the original surveys and in making such estimates had access to the original field-notes and cross-sectioned the work, and also had access to the notes made during the progress of the work?

Ans. The original field-notes and the cross-section could have been of no benefit whatever in arriving at the amount of work done in the excavation of rock work, for the reason that the cross-sections must have been made on some given plan for grading the road, and the road bed is not graded to any uniform plan. I will refer to all the diagrams in Book A, but more especially to those contained from pages 23 to 54, and also diagrams contained on pages 64 to 68, and on pages 100 and 101.

6 x-ques. When you say the road was not graded upon any uniform plan, do you mean that it was not graded upon the plan adopted by the chief engineer, and as it was laid out and cross-sectioned by engineers under him, or what do you mean?

Ans. I mean that the slopes or walls on either side in the embankments are of all conceivable forms and shapes, and that the width of the road bed in the excavations at sub-grade varies from thirty feet to fourteen feet and under; that there are places where several strata of rock with strata of sand between each; that there are other places of solid rock overlying loose rock; and places where rock broken up in large masses and loose or shale rock mixed; that there are places where considerable amount of solid rock has been obtained outside of the slopes, on either side of the road. The object of cross-sectioning a road is to guide the workmen during its progress, and not for the purpose of computing final estimates. It is impossible for a
199 contractor to excavate rock to uniform slopes, and in common excavation, washes from the bank frequently occur, which the contractor has to remove, and is justly entitled to payment for the same. The road bed through excavations of rock on this road could have been graded much nearer to a given plan than it has been done. The centre levels or original first field-notes were merely to make an approximate estimate and judiciously lay on the grade lines.

7 x-ques. Is not the ballasting on a road, especially sand ballast, liable to waste by washing, sinking, and blowing; and are not em-

bankments liable to the same waste, and from one or more of the same causes?

Ans. Sand ballast would not be as liable to wash as clay ballast; embankments made of sand are not so liable to wash from falling rains as embankments made of clay or loam. The sand absorbes the water like a sponge, and it does not run off and furrow out the embankment. I did not discover any wash on any of the embankments composed of sand. There were some slight furrows down the sides of embankments made of clay and loam. I have never seen a road where there was so little wash as upon this road. I could not discover that there had been any wash on the sand ballast. We took the depth of the sand ballast on the centre of the road bed between the rails, giving the depth that was there. We added a tenth for shrinkage. We deducted nothing for the space occupied by the cross-ties. The borrowing pits from which the sand ballast was obtained were left in an exceedingly rough shape, and I think the am'ts could be arrived at with greater accuracy than in those borrowing pits; a slight waste of the sand might occur from the dumping it at the edge of the narrow embankments, and running down the slope on either side, but I noticed that wherever it had appeared to run down so, that they had thrown it back into the road bed, the embankments being of only a few feet in height. I consider the idea of the blowing very
200 absurd; there was considerable said about blowing when we measured the work by Mr. Gilbert. I noticed particularly where the road passed through heavy timber for a few miles, and protected from the winds, and also over prairies; the embankments over prairies, exposed to the winds, were in as perfect condition as through those woods. The passage of trains over a road ballasted with sand will raise a considerable dust, but very small quantity of this fine dust interspersed with this sand, as was the case upon this road, will make a considerable cloud and amount to little or nothing as far as waste is concerned.

(Recess taken till 8 p. m., when the parties appeared as before, and the examination of the witness was continued.)

8 x-ques. Who personally employed you to make this survey and estimate?

Ans. Mr. Fleming and Mr. Gunnison.

9 x-ques. What did they inform you was the object or purpose of the survey?

Ans. They informed me that the purpose was to ascertain the amt. of work done by Mr. Chamberlain; that they believed a great swindle had been practiced upon the company. I replied that I would measure the work, but would make a liberal estimate and give Mr. Chamberlain all benefit of any doubt that might arise; that I would give him, Mr. Chamberlain, the long end of the lever, was one expression that I think I made use of; that it was very unpleasant for me to rake up old sores. Mr. Fleming replied that he wanted us to make a full estimate of everything that Mr. Chamberlain had done on the road, and be sure and get it enough so that there would be no doubt. I think he made use of the expression that there would be steal enough then.

10 x-ques. When and where did this interview take place?
201 Ans. It was in Sept. or in August, 1861, and I think on the cars, going to La Crosse, or at La Crosse, I can't say which.

11 x-ques. At the time you met Fleming at La Crosse, or on your way to La Crosse, was it by accident you met, or had you theretofore been employed to go there?

Ans. To make that intelligible, I would like to state this just as it was. Mr. Patten came to my residence in the town of Beloit and told me that the third mortgage bondholders of the Milwaukee and La Crosse R. R. wanted me to go to Milwaukee, and to go on to the Milwaukee and La Crosse R. R. with him to measure the work, and that Mr. Carpenter had recommended them to get me. Mr. Patten is himself a civil engineer. In consequence of what Mr. Patten said I met Mr. Fleming at the New Hall House, Milwaukee, and we went out to La Crosse together.

12 x-ques. Did you have conversation with Mr. Patten and Mr. Fleming before you went out on the road, in regard to the objects of the survey and measurement, and how long conversations or interviews did you have with them?

Ans. Well, Mr. Patten took me from my residence to Janesville in a carriage, a distance of about fourteen miles. We had conversation on various subjects. I don't know as the La Crosse railroad was mentioned during the ride. At Milwaukee I met Mr. Fleming and Mr. Gunnison at the New Hall House. Mr. Fleming told me they wanted me to go on the road and make the measurements as I have before stated.

13 x-ques. Did they furnish you with any data, or copies of measurements or estimates that had been previously made? If so, state what.

Ans. They did not. There was some conversation about measurements that had been previously made, that is, Mr. Fleming
202 frequently made remarks during the time we were making the survey after I had hastily run over my minutes in the evenings to ascertain about the amount of work done, how nearly we agreed with Mr. Edgerton's measurements. He would state the amt. that Mr. Edgerton had made. I paid no attention to the conversation and would forget the amounts within a few minutes, for I cared nothing about what Mr. Edgerton had made.

NOTE.—At the request of the deft's counsel the last question (13 x-ques.) was re-read to the witness by the exam'r.

14 x-ques. You stated in your direct examination that you compared your own estimates and surveys with those of Mr. Woodward, chief engineer, and made frequent allusion to contracts. If there were no former estimates or documents shown to you, how do you reconcile your former statements?

Ans. I meant to be understood in my answer to the 13 cross-question that they furnished me with no documents or estimates prior to my being engaged, or while I was engaged in making the measurements, but they did furnish me measurements while I was engaged in making calculations, and computing the quantities of work done,

while in Milwaukee. I was eight days and a considerable portion of the nights in making these computations.

15 x-ques. Did you not in your direct examination state once or more that you made your observations and measurements along the line which you assert you surveyed and measured, with particular reference to Mr. Chamberlain's contract?

Ans. I think not. I never read Mr. Chamberlain's several contracts until after I had made the measurements, and not until, I think, it was, last Monday. Neither had I read or examined Mr. Woodward's estimates until this present week.

16 x-ques. Did you set about the work of remeasuring
203 about which you have testified with a belief or prejudice upon your mind that there had been former over estimates made in Mr. Chamberlain's favor?

Ans. I did not. I had no prejudice against Mr. Chamberlain, or any of the engineers employed upon the road, and was fully determined to do Mr. Chamberlain justice.

17 x-ques. I do not think you have answered my question fully; what I meant by the use of the word prejudice was not as to Mr. Chamberlain personally, but whether you had not been taught to believe, or had been told, so as a create a prejudice upon your mind that there had been over estimates made in Mr. Chamberlain's favor?

Ans. I had frequently heard, previous to making those measurements, that great frauds had been practiced upon that road, but such reports had no weight or influence with me in making the estimates or arriving at the amt. done.

18 x-ques. Did not Mr. Fleming and Mr. Gunnison, in the interview which you had with them, tell you in substance or effect that the object of your measurement was to demonstrate some of these wrongs and frauds about which you had been told?

Ans. I think Mr. Fleming did; that the object was to find out the great swindle or fraud that had been practiced.

(19 omitted, none in deposition.)

20 x-ques. Do you think that you did do it as impartially as you could have performed the work which you did if you had gone there to do it entirely uninformed of the object for which it was being made, and without having had the interviews which you had with Mr. Patten, Mr. Fleming, and Mr. Gunnison?

Ans. I think I could and did, and had Mr. Chamberlain been the aggrieved party, and employed me to make those measurements.

I would not have made any different measurements from what
204 I did; there is one thing occurred to my mind, that I was furnished with a short piece of a profile during the time we were occupied in making the measurements, purporting to be made by some assistant engineer upon the road, some one employed on the road. It did not aid us in any respect in arriving at the amts. done.

21 x-ques. Did you on any instance, in attempting to arrive at the results which you have testified in your direct examination, measure borrowing pits?

Ans. I did not measure any borrowing pits, they could not have been measured.

22 x-ques. Did you have the advantage in your work of remeasurement of any of the original cross sections, or have access to them? or cross sections taken during the progress of the work?

Ans. I have never seen the field-notes of any of the original cross sections, or of the cross sections taken during the progress of the work.

23 x-ques. You have stated that the borrowing pits could not be measured, how then could you measure the original contents of an excavation without access to the cross sections, or without access to something to teach you the original contour of the surface?

Ans. In the rock excavations, the surface, as well as the bottom of the rock, can be arrived at by digging into the slopes. The top width of the rock excavations being only from thirty to forty feet and upwards in width, we always considered the contour of the surface of the rock to be a plane. There were no indications in any place of any upheave or depression. It would probably be well enough to state, we found one point on the line of the road east of Kilbourn City; it was a spur of a ridge, where the road bed had been graded across it. It is represented in "Book A of diagrams," on page 115, where the road bed varies from eleven feet to twenty-one feet in
205 width. On the south side of the road bed, the road bed has been graded out to the surface of the ground. On the north side of the road bed it is rough excavation. At a distance of from six to eight feet from the foot slopes of the rock excavation on the north side, we dug down from two and a half to three feet below the sub-grade, but could and no rock. In making our estimates we allowed the entire amount as rock excavation. This is the only place on the line of the road bed where the walls of the rock on the north and south side cannot be seen. At two or three places west of Kilbourn City we took contour levels on each side of the road bed outside of the top slopes, to ascertain whether there could have been any convexity, or concavity. Those contours did not indicate either, except for a short distance at the west approach of the tunnel for a distance of about fifty to seventy feet in length of the road, where the surface of the ground indicated a slight convexity, and also at the east approach of the tunnel, where the contours indicated a slight concavity.

24 x-ques. You have not quite answered my last question, and I shall have to ask the examiner to read it to you again, and ask a more direct answer to it.

The examiner reads said question to the witness again, and the witness answers:

The borrowing pits could not be measured for the reason that they are frequently commenced in a side hill, and the original surface of the ground entirely removed. We had no means of arriving at depth at one end of the borrowing pits, sometimes of both ends, but in the through cuts and excavations on the road bed, the surface of the earth, or rock, at the outside of the top slopes of the earth or rock had not been disturbed. We therefore could get sufficient data

for computing the work done. I will state further, I have never known a road of that dimensions or magnitude over so level a country as that is where any calculations were made in the final measurements for any slight concavity, or convexity, that might have occurred. In making final measurements I have always been in the habit of taking the levels or depths from the line of collimation for the entire width of the road bed. Contractors in performing
206 the work frequently get the slopes in the excavations steeper than the plan upon which it was laid out, but in performing the work as near as it well can be done to the plan, I have always considered that they were entitled to the entire amount of excavation removed. I stated in my direct examination that it had never been a practice with me to make a final measurement from the original cross sections, for the reasons above stated, that the contractor will not get the benefit of removing any extra earth outside of the slopes, or any washes that might have been carried into the road bed and removed.

25 x-ques. Why could you not measure borrowing pits in the same manner, and with the same accuracy, that you have just described in measuring excavations?

Ans. For the reason that they are frequently made on side hills or spurs of land, where the original surface is entirely removed on one or both sides. If a borrowing pit was in a through cut, we could measure them.

26 x-ques. Suppose side hill cuttings: how are you going to ascertain the amount of earth taken away to accomplish the cutting?

Ans. We could not ascertain it if one side was entirely removed; but on this road there are no such places, except at the place mentioned east of Kilbourn City, where we allowed a larger amount of rock excavation than had ever been done there at that place.

27 x-ques. Why do you so constantly allude to rock excavations in giving your testimony when you have been in no wise interrogated thereto?

(No. 28th question.)

Ans Because we only measured two pieces of earth excavation, but we measured a large number of pieces of rock excavation.

207 29 x-ques. In your experience as an engineer, have you had occasion to make and deliver estimates to contractors for work done?

Ans. I have.

30 x-ques. In such experience have you made your estimates according to the returns made by the division and assistant engineers, made as the work progressed, and according to their professional observations made at the time or have such estimates been made according to the manner in which you have said it is possible to make them, without any data other than observation after the work is done?

Ans. I have frequently made such estimates or caused them to be made without any reference to the original field-notes, but on side hill excavations, where only one side of slope is left, we always take contours as we would in a borrowing pit, and make the final estimate

from those original notes, making allowance for any work that has been done outside of the slope on the one side.

31 x-ques. Do you mean to say that in such cases you as an engineer alone refer to your original notes or cross sections in cases of side hill excavations?

Ans. We frequently, in making the monthly estimates, which are never considered to be perfectly accurate, refer to the original cross sections, but in making the final estimates, as I have said before, I have always had the levels taken every five feet in distance across the road bed, except on side hills where one side of the excavation was entirely removed.

32 x-ques. Is it not true that a body of engineers (or a corps of engineers) having been engaged in laying out and directing
208 the work of constructing a railroad over one hundred miles in length, and constantly engaged therein for a period of some seven months, they having participated in the original surveys and all the details of laying out the work and making monthly returns of the character and quantity of the work as it progressed, would be more accurate in ascertaining the amount and character of the work than two strange engineers could possibly be, four years after the work was done?

Ans. That would depend upon circumstances. If the work was upon side hills, where the earth had been entirely removed to the depth of the road bed, and having no slopes upon that side, engineers, strangers to the work, and having no access to the original minutes, could not estimate it, or where a hill might occur in the line of the road bed, a round conical hill and entirely removed, in that case they could not make it. But on a line of railroad over a country as level as this generally is, and where the slopes are left on both sides of the excavation, they could measure it with as much accuracy, and if industrious, in a much less time than seven months.

Adjourned to June 10, 1865, 9 a. m., when the parties appeared as before, and the examination of the witness was continued.

33 x-ques. You spoke, in your direct examination, of examining the am't of rock excavation at the tunnel approaches; what was the character of the rock, and was it such as would make it subject to decomposition or disintegration by exposure to the atmosphere?

Ans. The character of the rock is a soft crumbly white or gray sandstone, unfit for building purposes. I dug into the rock with a pick two feet and upwards, and also with a jack knife several inches, when I succeeded in getting a piece of the rock with a pick weighing from fifty to sixty pounds; it would crumble into fine sand by dropping it on the cross ties of the road bed. I also dug into the embank-
209 ments where this rock had been deposited from three to four feet, where the atmosphere would have little or no effect upon it at that depth, with a view to ascertain whether there was any considerable large masses of rock in the embankment. I could find none larger than a hen's egg. The fall of the rock in the tunnel approaches had a thin crust somewhat similar to the glazing on earthen ware. This thin crust is harder than the rock under it, which led

me to believe that it was becoming harder by being exposed to the atmosphere, as sandstone generally does.

34 x-ques. Can you tell what proportion of the embankments which you examined were of clay or loam, and what of sand?

Ans. No; I could not.

35 x-ques. Did you measure the bases of the back walls?

Ans. I did not, only at the ends which was exposed to view. I dug down behind the walls at the top to ascertain their width. The stone appeared to have been wheeled in, tumbled in with wheelbarrows or carts. There was a small piece of bank wall that was bulged out and of no use. I dug through that and tore the stone out to find its thickness; this was at the point west of Kilbourn City.

36 x-ques. When were the diagrams, which you produced in evidence here, prepared by you?

Answer. A portion of them were prepared here at Milwaukee in August, 1861, by Michael Lynch, and the balance were prepared at my house in Beloit in the winter and spring of 1861, 1862.

37 x-question. You state that you measured but two earth cuts on the line of the road, how then did you arrive at the quantity of work done?

Ans. I meant to be understood that we measured but two earth cuts that comes into the estimate of quantities that I have here.

210 I stated how we arrived at getting the measurements in my examination before. I have made and stated here measurements of certain parts of the work. There were other parts of the work which I did not and could not measure, and have not testified about. There was a very large am't of work done by Mr. Chamberlain which I have not and could not estimate.

38 x-ques. In the estimates of prices which you have given, did you intend to fix them as the value of the work in 1857, or did you refer to the time you were there in 1861?

Ans. I meant to fix the prices at the fair values for the years 1856 and 1857.

39 x-ques. Will earth banks settle for a period of time after they are constructed; and if so, in what proportion?

Ans. The length of time that it would take earth embankments to settle, or what we usually term shrink, will depend upon the height and manner of construction. If a high embankment is carried out to sub-grade, the earth being dumped over at the end of the embankment, it will take longer time to settle or shrink than it would if carried out in layers of three or four feet in thickness. The shrinkage of embankments composed of loam or sand is usually estimated at one-tenth. We assume this one-tenth shrinkage, but it would be very difficult by any measurement to tell the exact amount.

Re-direct (by Mr. Carpenter:)

1 r. d. ques. I understand from your direct examination that you made the measurements and calculations of quantities in August, 1861, is this correct?

Ans. They were made in 1861, in August, 1861.

2 r. d. ques. When did you make the estimates, or amounts in money, from the contract?

211 Ans. On Tuesday and Wednesday of this present week.

3 r. d. ques. When you were making the measurements and calculations of quantities, did you have the contracts and Woodward's estimate before you?

Ans. When I made the estimates and calculations of quantities they were furnished me, but I did not read them, for the reason that we understood Mr. Fleming expected the suit called in a few days, and we were very busy, occupied from daylight to 12 o'clock at night. And I then only furnished them with certain quantities resulting from my work. I did not affix any price at that time to those quantities.

4 r. d. ques. When you did fix the estimates of prices on Tuesday last, was it after an examination of those contracts and that Woodward estimate of Oct. 1, 1857?

Ans. It was. Mr. Carpenter requested me to fix the prices of the various items of work done by Mr. Chamberlain under his contracts at the contract price, and when the contract specified no price for work to fix the fair price for the same during the time it was done, and to carry out the cost of doing the work, and note in the opposite page, in what he terms parallel lines, Mr. Woodward's estimate and cost of work. And the statement, Exhibit No. one, annexed to my deposition, is the result of that estimate. Before doing so, I read Mr. Chamberlain's contracts and Mr. Woodward's estimates, estimating the quantity of work done, and the cost of doing it, on ten different things.

5 r. d. ques. What among railroad men is understood by the term net revenues or net proceeds arising from the operation of a railroad?

Ans. It would be the am't of moneys they received from business done upon the road, less the cost of operating the road.

212 (NOTE.—By stipulation the same objections are taken to the re-direct examination and in the same form as were taken to the direct examination.)

Recess taken till 2 p. m., when the examination of the witness was continued as follows, to wit:

6 r. d. ques. Look at what purports to be copy of modification of contract, printed on page 41 printed record of Cleveland case, marked Schedule A A, and state what would be a fair price for doing the several items of work there mentioned in 1857 and 1858, except excavation of tunnel approaches, which you have already testified about.

Ans. All that I can state about it, the excavation of rock in the tunnel and sinking the shafts, excluding the rock in the tunnel, would be worth three dollars per cubic yard, and sinking the shafts five dollars per cubic yard.

7 r. d. ques. You have stated in your testimony that some portion of the work done in constructing this division you were unable to measure and estimate. State now whether this remark applies to any of the subjects or matters which the left-hand page of Exhibit No. 1 purports to estimate, or whether as to all those matters your measurements were full and satisfactory and the results there stated correct.

Ans. As to all the matters set forth in the left-hand page of Exhibit No. 1 the measurements were full and complete, and the results there stated are correct. Those matters that we could not make accurate measurements of we did not pretend to measure or estimate.

Adjourned till 10 o'clock Monday morning, June 12, 1865, when the parties appeared as before, and the defendant, by consent, made the same objections and in the same form as were made to the direct examination of the witness. After the examination of other witnesses the examination of this witness was resumed, as follows:

213 8 r. d. ques. State whether you found in your survey any of the original engineers' stakes on the line of the work; and if so, describe them, how you found them, and what they indicate.

Answer. We found many such stakes standing along the line of the railroad at regular intervals of one hundred feet; at other places we would only find one stake, the others having been destroyed. The stakes which we did find were invariably marked with the number of the station, together with the cutting or filling as the case might be, and they all indicated, with one exception, that the original cross sections had been made at intervals of one hundred feet. This exception is at a point nine thousand four hundred and fifty feet easterly from the east end of the bridge across the Wisconsin river at Kilbourn City. This stake was marked thus: "792–72 cut 4.4," the figures "4.4" meaning four feet four-tenths, and the figures "792–72" indicated that a cross section had been taken here, and that the point was seventy-nine thousand one hundred and twenty-eight feet from the easterly starting point of the western division. By our measurements this point was seventy-nine thousand two hundred and fifty feet westerly from the ninety-fifth mile post standing at Portage City.

9 r. d. ques. In the measurements you made state whether the earth said to have been shoveled off the sides is allowed in the am't you have allowed of work done; and if so, explain how?

Ans. We always allowed the depth of ballasting from the highest point between the rails, and it would not be affected by any shoveling off. We allowed the ballasting for the entire width of the road bed, and to this, as I have stated in my previous testimony, we added one-tenth for shrinkage. The estimate which we have returned here is one-tenth greater than the measurements which we made would give, and that, in my opinion, is as much as should be allowed for shrinkage.

Re-cross:

214 X-ques. Would not many of the cross section stakes be destroyed in taking out large excavations? and if so, how can you tell, four years after a piece of work has been done, how often a piece of work was originally cross-sectioned?

Ans. Many of the stakes would be so destroyed in grading the road bed, but we always re-set such stakes as have been destroyed from the original field-notes or cross sections during the construction of the

work. And finding no stakes standing along the line of the road, except such as I have described in my previous answer, I should take it for granted that the cross sections had been originally made as I therein stated.

HUGH LEE.

Exhibit No. 1.—(*Left hand page.*)

Work done on La Crosse and Milwaukee railroad as per Lee, Patten & Lynche's admeasurement, made Aug. and Sept., 1861.

Eastern division:		
76,605 cubic yards ballasting from Beaver Dam to Portage, (contract price, 40c. per cub. y'd)		$30,642 00
27,266 cubic y'ds emb'k't across Beaver Dam pond, worth 20 c'ts; probably about 18,000 cubic y'ds in this bank		5,453 20
Western division:		
28 62-100 miles grub and clearing, from Portage to New Lisbon, (contract price $300 per mile;) fair price, $150 per mile		8,586 00
22,668 cub. y'ds solid rock, from Portage to La Crosse, $1 per y'd, worth from 40c. to 75c. per cubic y'd		22,668 00
53,377 cub. y'ds loose rock, from Portage to La Crosse, at 75c.; worth from 25c. to 30c. per cub. y'd		40,032 75
1 road way timber bridge, worth	$200	
1 cattle pass, worth	100	
Temporary road crossings and cattle guards from Portage to La Crosse	350	
		650 00
166 cub. y'ds bank wall, worth $1 per y'd	166 00	
240½ cub. y'ds bank wall, worth $1 25 per yard	300 60	
		466 60
215 64,000 cub. y'ds tunnel approaches, as per E. W. Woodward's estimate October 1, 1857, at $2 per cub. y'd		128,000 00
We now find a different state of things at the tunnel approaches. See our estimate.		
36 32-100 miles ballasted, from Portage to New Lisbon, worth $410 per mile, (no contract)		14,891 20
		251,389 75

Our estimate for tunnel approaches is as follows: 21,121 c. y'ds soft crumbly sand rock, worth from 45c. to 50c.; 1,523 c. y'ds loose rock, worth from 25c. to 30c.; 75,538 c. y'ds sand excavation, worth 16c. per c. y'd, exclusive of haulage.

Right hand page of Exhibit No. 1.—E. W. Woodward's estimate.

Eastern division:	
192,542 cub. y'ds ballasting, from Beaver Dam to Portage, at 40c. per cub. y'd	$77,016 80
Filling in bank at Fox Lake	20,768 65
Western division:	
80 miles grubbing and clearing, at $300 per mile	24,000 00
118,250 c. y'ds solid rock, from Portage to La Crosse, $1 per c. y'd	118,250 00
2,400 c. y'ds loose rock, from Portage to La Crosse, 75c. per y'd	1,800 00
Roadway and cattle passes	11,700 00
3,500 c. y'ds bank wall, at $3 per c. y'd	10,500 00
64,000 c. y'ds tunnel approaches at $2 per c. y'd	128,000 00
45¼ miles ballasted, at $2,000 per mile	90,500 00
	482,534 65
	251,389 75
	231,144 90
Deficiency in embankments	94,194 00
	325,318 90

Indorsement on the back of right hand page of Exhibit No. 1:

Aggregate length of embankments from Portage to tunnel, 47 06-100 miles. The embankments are deficient about 4,758 cub. y'ds per mile, or 224,911 cub. y'ds, worth 20c. per cub. y'd, including haulage	$44,982 00
Length of embankments from tunnel to La Crosse, 44 miles; and are deficient about 5,590 cub. y'ds per mile, or 245,960 c. y'ds, worth 20c. per c. y'd	49,192 00
	94,174 00

[Here follows "Book A" of diagrams marked pages 216 to 299, inclusive.]

[Here follows "Book B" of diagrams marked pages 300 to 319, inclusive.]

320 In the circuit court of the U. S. America in and for the District of Wisconsin.

THE MILWAUKEE & MINNESOTA RAILROAD COMPANY
against.
SELAH CHAMBERLAIN.

UNITED STATES OF AMERICA, *District of Wisconsin, ss.*

Deposition of Selah Chamberlain, as a cross examination on the part of the complainant, taken before Francis Bloodgood, one of the examiners of this court, at his office in the city of Milwaukee, pursuant to rule 67 in equity and the rules and practice of said court, before the examiner at his office, June 7, 1865. Present, M. H. Carpenter, esq., of counsel for the complainant, and N. J. Emmons, esq., of counsel for the defendant.

Selah Chamberlain, sworn, says :

1 cross-ques. Under what contracts between you and the La Crosse and Milwaukee Railroad Co. was the work done by you, which entered into the judgment confessed by said co. in your favor, in the district court of the United States for this district on the second day of October, 1857?

Ans. The first is the ballasting contract, eastern division, dated, Nov. 20, 1856. Second is for the construction of the western division from Portage City to La Crosse, dated 20 January, 1857, and the modification of the same dated 30 April, 1857. One note returned for work done on the eastern division under the contract of Chamberlain & Alden, for the construction of the road from Beaver Dam to Portage City, amounting to $10,000. Copies of all these contracts, except the Chamberlain and Alden contract, are attached as exhibits to my answer to the bill of Newcomb Cleveland against the La Crosse & Milwaukee Railroad Co., myself and others; and are found on pages 35, 36, 37, 38, 39, 40, & 41 of the printed record of that cause, which has been qualifiedly stipulated in evidence in this cause.

(NOTE.—The parties here stipulate before the examiner that the said copies of said contracts may be read in evidence from the
321 said printed record, with the same effect, and subject to the same objections as though the original contracts were attached as exhibits to this deposition.)

(NOTE.—The complainant's counsel here reserves the right of recalling this witness, the defendant's counsel consenting.)

S. CHAMBERLAIN.

JUNE 10, 1865.

Parties appeared before the examiner as before, pursuant to agt. Selah Chamberlain being recalled by complainant for further cross-examination, testified as follows :

2 c. question. Did you furnish before the masters in the case, Bronson & Soutter *vs.* the La Crosse and Milwaukee Railroad Company & others, on oath, a statement of the net earnings of the road received by you while in possession of the road, as follows :

Statement of earnings and expenses of La Crosse & Milwaukee railroad from October 1, 1857, *to November* 30, 1859, *as operated by S. Chamberlain:*

	Freight.	Passengers.	Miscellaneous.	Total.	Expenses.	Net earnings.
1857, October	$94,050 83	$91,413 45	$887 90	$46,352 18	$15,781 89	$30,570 29
November	24,337 24	13,522 61	616 70	38,476 55	13,778 30	24,698 25
December	10,730 27	17,497 77	648 88	28,876 92	13,723 61	15,153 31
1858, January	12,758 24	10,702 07	775 86	24,236 17	11,730 25	12,505 92
February	10,651 00	8,946 46	437 92	20,035 38	9,864 20	10,171 18
March	13,040 48	12,679 38	544 70	26,264 56	13,341 68	12,922 88
April	17,852 25	13,785 21	2,053 03	33,690 49	14,538 47	19,152 02
May	23,803 76	17,942 93	632 74	42,379 43	16,511 44	25,867 99
June	28,153 79	15,043 54	678 21	43,875 54	20,485 81	23,389 73
July	28,267 40	17,316 34	2,025 27	47,609 01	22,437 58	25,171 43
August	30,029 05	16,885 08	767 99	37,682 12	24,051 71	13,630 41
September	37,248 03	23,714 34	2,339 18	63,301 55	26,181 24	37,120 31
October	32,255 48	28,357 87	941 17	61,554 52	32,693 36	28,931 16
November	26,944 10	27,003 05	1,054 89	55,001 98	32,257 55	22,744 43
December	18,937 59	13,368 92	4,516 55	36,823 05	24,305 89	12,517 22
1859, January	19,304 68	14,972 06	916 69	35,193 45	28,777 74	6,415 71
February	16,835 22	17,869 51	898 52	35,603 25	33,152 63	2,450 62
322March	15,947 73	18,433 13	1,999 78	36,380 64	34,818 76	1,561 88
April	18,916 17	18,786 05	1,086 16	38,788 38	38,213 17	575 21
May	23,865 83	21,973 28	1,011 20	46,850 31	32,824 78	14,025 53
June	17,556 63	26,770 49	5,672 55	49,999 67	31,824 08	18,175 59
July	15,833 68	16,343 56	1,039 22	33,216 46	32,554 36	662 10
August	17,488 38	21,119 66	5,995 58	44,603 60	25,294 62	19,308 98
September	64,660 53	29,223 89	5,507 39	99,391 81	33,127 33	66,264 48
October	90,233 80	19,919 69	1,086 97	111,240 46	39,260 09	71,980 37
November	62,133 28	21,263 41	6,131 34	89,528 03	49,480 18	40,047 85
						556,014 66

and is that statement correct?

Ans. I did furnish it, and it is correct to the best of my knowledge and belief. It was furnished at that time from the books.

3 cross-ques. Did you, on 26th Sept., 1857, simultaneous with the execution of the lease from the company to you, enter into a certain contract with the company, and are copies of that lease and contract printed on pages 29, 30, 31, 32, 33, 34 & 35 of the record—printed record—in the Cleveland case, which record has already been qualifiedly stipulated in evidence?

Ans. I did, and they are.

(NOTE. Parties here stipulate before the examiner that the said copies of the said lease, and said contract, may be read in evidence on the hearing of this cause, with the same effect and subject to the same objection and exception as though their respective originals were presented and proven, and offered in evidence before the examiner, and attached to this deposition.)

4 cross-ques. During the time you were in possession of the La Crosse and Milwaukee railroad, stock, franchises, &c., from the date of your lease to the time when you surrendered possession to Bronson & Soutter, as stated in your answer to the amended bill in this cause, what amount did you pay on the Palmer mortgage on the eastern division? State the dates and amts. and items of the several payments.

Ans. I paid as follows:

323	January 1, 1858, paid interest on $950,000	$37,840 00
	January 1, 1858, paid N. Y. exchange on $950 000	475 00
	Nov. 1, 1858, paid interest on $950,000	36,940 00
	Nov. 1, 1858, paid sinking fund on $950,000	12,000 00
	Nov. 1, 1858, paid exchange and advertising	522 06
	June 1, 1859, paid interest on $950,000	37,100 00
	June 1, 1859, paid exchange and advertising	587 85
	Total paid on Palmer mortgage	125,464 91

5 cross-ques. Is this the mortgage first mentioned in your lease, upon which you were to make payments?

Ans. It is.

6 cross-ques. During the same term of time, what pay'ts did you make upon the Milwaukee city mortages, so-called, which are specified second and third in your lease?

Ans. I paid as follows on same:

1858, March 1, interest on $314,000 Mil. city bonds due in N. Y.	$10,727 50
1858, March 1, exchange on $314,000	1,529 70
1858, Sept. 1, interest on do	10,675 00
1858, Sept. 1, advertising and exchange	564 92
1859, March, interest on $314,000	10,097 50
1859, March, advertising and exchange	772 40
Total paid on city mortgages	34,367 02

7 cross-ques. During the same term of time what payments did you make on the mortgage of $1,000,000 00 mentioned 4th in your lease, being the mortgage to Bronson and Soutter, on the eastern division?

Ans. I paid on said mortgage as follows:

March 1, 1858, interest on $1,000,000	$39,840 00
(Exchange and advertising embraced in payments on city mortgages.)	
Sept. 1, 1858, interest on $1,000,000	39,680 00
(Exchange on same as above.)	
March, 1859, interest on same	39,880 00
Total paid on said mortgage	119,400 00

324 8 c.-ques. Did you, during that term of time, pay, or have you since paid, any other sum on either of said mortgages described in your lease, first, second, third, fourth, on pages 30 and 31 of said printed record?

Ans. I did not, and have not.

9 cross-ques. Did you sometime make answer on oath to the bill of complaint of Sebre Howard against the La Crosse & Milwaukee

Railroad Co. and yourself; and is the paper here, and now shown you, and marked Exhibit No. 2, a copy of that answer?

Ans. I did make answer in that case, and I presume this certified copy shown me, marked Exhibit No. 2, is a correct copy thereof.

(NOTE.—The complainant here offers the said Exhibit No. 2 in evidence, to be annexed to this deposition.)

(NOTE.—To this cross-examination the def't, by stipulation, makes the same objections and in the same form as he made to the examination of Hugh Lee.)

Re-direct by Mr. Emmons:

1 r. d. ques. Did there precede the making of what is known as the tunnel contract, or the modification of the construction contract, providing for a change from a through cut to a tunnel, any negotiations between you and the company as to the price of work?

(Objected to as immaterial and incompetent.)

Ans. There was negotiation for several days.

2 r. d. ques. Were the prices agreed upon reasonable? and if yea, what facts and considerations prevailed to make them reasonable?

(Objected to as immaterial and incompetent.)

Ans. They were reasonable. In my contract of January 0, 1857, I was to have a through cut, for which I was to be paid one dollar and twenty-five cents per yard. After they had decided to change it into a tunnel, they sent for me from Portage City to come here and agree upon prices for a tunnel. I did come, as requested,
325 and talked the matter up with them for two or three days, and desired them to assume the risk and classify the material, pay for all bailing of water, and all unforseen contingencies that might arise. It was considered very risky work. They declined this, but wanted me to name a price upon which I should assume all risk of the tunnel approaches, and the tunnel itself, and all the work in and about the tunnel. I did make the proposition as contained in the modification of the contract of April 30, 1857. This modification is found on page 41 of said printed record. At the time the contract was taken during the winter of 1857, I considered my contract for the through cut for the tunnel was worth more to me than the tunnel contract, and I think the same now.

(NOTE.—It is understood that the def't offers the testimony as called out by the two last questions only as rebutting testimony of the same character offered by the complainant. To the competency and relevancy of which the def't has, and still objects, and such objection prevailing, this testimony will not be insisted upon.)

S. CHAMBERLAIN.

Taken town in writing by the examiner, and when completed, having been read over to the witness, was by him subscribed in the presence of said exam'r and of such of the parties and counsel as were in attendance this 10th day of June, A. D. 1865.

FRANCIS BLOODGOOD,
Examiner in Chancery.

Exhibit No. 2, attached to the deposition of Selah Chamberlain.

326 The district court of the United States for the district of Wisconsin, in equity.

The separate answer of Selah Chamberlain, one of the defendants to the bill of complaint of Sebre Howard against this defendant and the La Crosse & Milwaukee Railroad Company:

This defendant, now and at all times saving and reserving unto himself all benefit of exception to the many errors and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as he is advised it is material or necessary for him to make answer unto, answering, says:

That he is informed and believes, and that the complainant did, at or about the time in the bill of complaint mentioned, recover in form a judgment for the amount mentioned in the complaint, and that there exists in this honorable court, on the law side thereof, a record and proceedings purporting to evidence the recovery of a valid judgment against the said railroad company defendant; but this defendant is advised and believes that there is in law nor fact any such recovery, because, he says, that there was in fact, at the time of the commencement of the suit wherein such recovery purported to have been had, no such corporation as the La Crosse & Milwaukee Railroad Company in existence, capable of being impleaded and sued; and that such ostensible and apparent recovery is in law and fact wholly void, and was in truth collusive so as against this defendant. And this defendant claims the same benefit of said matters above set forth in this his answer as though he had pleaded the same.

And this defendant, further answering, says that if the said La Crosse & Milwaukee Railroad Company was, at the date of the complainant's said suit at law, and the said recovery thereon, as aforesaid, a valid and subsisting corporation for the purposes of such recovery, that nevertheless he is advised that the recovery of said judgment, and the issuance of execution thereon, in the manner and form alleged in the bill of complaint, created no right to implead this defendant in manner and form, and for the objects and purposes mentioned in the bill of complaint, because, he says, that he is informed and

327 believes, and so expressly charges the truth to be, that long prior to the said alleged recovery of said judgment by the complainant, and on or about the twenty-first day of June, A. D. 1858, the said La Crosse & Milwaukee Railroad Company, in order to secure an issue of about two millions of its bonds, executed and delivered to one William Barnes, as trustee, and caused the same to be duly recorded in the office of the secretary of state for Wisconsin, its certain trust deed or mortgage, whereby, in order to secure the payment of said two millions of dollars of the bonds, the said company did grant, bargain, sell, and convey unto the said William Barnes all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, with its property, franchises, and effects, and by words of grant and conveyance, as follows:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises, and the sum of one dollar, paid by the said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of, or appertain to, said railroad; and also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made, or to be built or made hereafter; and also all and singular the locomotive engines, and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for, or used on,
328 said railroad, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroad; and also all and singular the rights, liberties, and privileges, and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse. And it is hereby declared to be the intention of the parties to these presents to convey to, and vest in, said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin.

And that afterwards, to wit, and on or about the eleventh day of August, A. D. 1858, and in order further to secure the payment of the said two millions of bonds, and by way of further conveyance and assurance, and in pursuance of a covenant and agreement on the part of said company, in the said mortgage or deed of trust contained, and by an indenture of deed of trust or mortgage bearing date on said eleventh day of August, duly executed, delivered, and recorded, did make a further conveyance to the said William Barnes, as trustee, and by words of grant, bargain, sell, conveyance, and covenant as follows:

Now, therefore, this indenture witnesseth that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises and of the mutual promises herein contained, and the sum of one dollar

paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, (200;) and
330 also the railroad of said company, commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles; and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed, and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R. Co. by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute or be a part of, or appertain to, said railroads, and including also all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all other improvements, on or appertaining to said railroads, whether now built or made or to be built or made hereafter.

And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or
331 used on said railroads, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest, on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of said bonds issued, or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroad had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated, and duly conveyed, and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company,
332 party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above-described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal, and mixed now vested or acquired, or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises above conveyed, or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, estates or corporations lawfully claiming or to claim the same or any part thereof, subject nevertheless to all legal liens already existing upon the property and franchises above mentioned.

And this defendant further says that said two instruments of deeds of trust or mortgages, construed and taken together as an entire security, have been commonly known as the third sinking fund mortgage of the La Crosse and Milwaukee Railroad Company, that afterwards arrears of interest upon bonds secured by said third sinking

fund mortgage remaining due and unpaid, the said William Barnes, in pursuance of power and authority in the said third sinking fund mortgage contained, proceeded to advertise for sale all of the property and premises in said sinking fund mortgage described and conveyed; and such proceedings were had that on or about the twenty-fourth day of May, 1859, all and singular the property, premises, and effects mentioned and described in said third sinking fund mortgage were sold as for default in the conditions of said mortgage, and in pursuance of the laws of the State of Wisconsin, bidden in by the said William Barnes, trustee, for the benefit and behalf of the holders of bonds secured by said mortgage, for about the sum of one and a half million of dollars, and that thereupon, and on or about the 26th day of May aforesaid, and in pursuance of the laws of Wisconsin, a new company and corporation composed of the holders of bonds for whose benefit said property, premises, franchises, and effects were bidden in as aforesaid, was created and formed by the name and style of the Milwaukee and Minnesota Railroad Company, which thereby succeeded to all the rights of property, privileges, franchises, and effects of the La Crosse and Milwaukee Railroad Company, freed and discharged of all liens and encumbrances created or suffered
334 by the La Crosse and Milwaukee Railroad Company subsequent to the said 24th day of May, and freed and discharged of all liens and encumbrances prior thereto and created or suffered subsequent to the said 21st day of June, 1858, subject only to the right of redemption in those parties whose liens and encumbrances might have accrued in the interval between said 21st of June, 1858, and 24th of May, 1859. And the defendant prays the same advantage of the matters and things last aforesaid as though he had pleaded the same.

And this defendant, further answering, says he admits that the La Crosse and Milwaukee Railroad Company did, on or about the 26th day of September, 1857, execute and deliver to this defendant a conveyance in writing containing, among other provisions and agreement, those mentioned in the bill of complaint; but this defendant expressly denies that such conveyance was made in fraud, or with any intent or design to hinder or delay the creditors of said railroad company; but on the contrary thereof, he says that the said conveyance was made to him and in form denominated a lease, but in truth and in fact a mere unintentional misnomer thereof to secure to him the payment of a just and bona fide debt due him from said railroad company.

This defendant utterly denies any fraudulent or covinous intent in such agreement, but avers that he entered into and took the same as a mortgage to secure to him a debt due from said company accruing to him as a contractor in the construction of the railroad of said company. He admits that he did, under said instrument of mortgage, enter into possession of said railroad, and that he has, since the first day of October, 1857, and until the 18th day of May, 1860, been in the receipt of the earnings of said road; but he says that when he came to the possession thereof the road was completed and in run-

ning order only to a point known as Kilbourn City; that he occupied and operated the road as mortgagee in possession up to that point, and from thence westward, as sections of the road were completed, to La Crosse, to which latter place the road was completed in the month of October, 1858. And he further says that all the earnings of the road have by him been applied strictly to the purposes contemplated by said mortgage; that is to say, the payment of
335 interest on prior mortgages, and the proper and care-maintenance of said road; and that there is still a large balance due him on the debt secured by such mortgage, and that for all his receipts since he has been in such possession of the income of said road, and his outlays on account of the mortgaged estate and the debt due him, to secure which said mortgage was given, he is ready to account as this honorable court may direct.

And this defendant, further answering, says he admits the rendition of the judgment in his name against the said railroad company in this honorable court, on the law side thereof, as mentioned in the bill of complaint; but he expressly denies all fraudulent or covinous intent therein or thereby. Said judgment was intended as an additional security to this defendant, and the consideration thereof was and formed part of the indebtedness for which said mortgage was given to this defendant.

And this defendant, further answering, says that his mortgage and judgment aforesaid are prior and superior liens to that of the third sinking fund mortgage aforesaid.

SELAH CHAMBERLAIN.

By his solicitors, EMMONS, VAN DYKE & HAMILTON.

EMMONS, VAN DYKE & HAMILTON,

Sol'rs.

DISTRICT OF WISCONSIN, *ss:*

On this 12th day of June, 1860, before me, the undersigned, personally appeared Selah Chamberlain, who being by me duly sworn, did depose and say that he has heard read the foregoing answer by him subscribed, and that he knows the contents thereof; that the same is true of his own knowledge, except as to the matters and things therein stated to be upon his information and belief, and as to those matters he believes it to be true.

GEO. COGSWELL,

Notary Public of the State of Wisconsin, Milwaukee County.

336 UNITED STATES OF AMERICA,

District of Wisconsin, ss:

I, John M. Miller, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom, now on file, and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed

the seal of the said court at the city of Milwaukee in the said district of Wisconsin, this seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the said United States the eighty-eighth.

[SEAL.] J. M. MILLER, *Clerk.*

[5-ct. in. rev. stamp, cancelled.]

The Milwaukee & Minnesota Railroad Company further read in evidence the following stipulation, and the articles of organization of said company thereto attached:

337 *Stipulation as to certain facts.*

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.

The parties to this cause respectively agree and hereby stipulate, that on the hearing of this cause it shall be considered, for all the purposes of this action, that the following facts are true, and they shall be taken to be sufficiently proven by this stipulation, viz:

That the La Crosse & Milwaukee Railroad Company was, from the 1st day of January, 1850, until the 21st day of May, A. D. 1860, a corporation existing under the laws of the State of Wisconsin, and that during that time its business affairs was managed by a board of directors; that about the 21st day of June, A. D. 1858, and that the said company did, on or about the day and year last aforesaid, make, sign, seal, execute, and perfect, ready to be negotiated, sold, delivered, and transferred, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and year, and payable in A. D. 1888, with interest, at seven per cent., payable semi-annually, on the 1st day of January and July in each year, with coupons for said interest to said bonds respectively attached; and that to secure the payment of said bonds, the said company did, on the said 21st day of June, 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust to William Barnes, to secure the payment of said last-named bonds, and the interest thereon, in and by which said mortgage or deed of trust said company mortgaged to said Barnes, trustee, for the purposes aforesaid, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the residue was
338 then in process of construction, including all and singular the several tracts, pieces, or parcels of land which then were, or thereafter might be, or constitute the site of the roadways, turn-outs,

engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted, or might thereafter constitute, or be, a part of, or appertain to, said railroad, whether then made, or to be made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on, or appertaining to, said railroad, whether then made or built, or to be made and built thereafter; and all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been or might thereafter be procured for or used in connection with such railroad.

And also all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse, together with other property and things in said mortgage described; and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, trustee, and was by said trustee thereafter caused to be duly and legally recorded in the office of the secretary of state of the State of Wisconsin, and as the plaintiff says, on information and belief, in the offices of the registers of deeds in the several counties through which said railroad passes, and was then located. That on the 11th day of August, A. D. 1858, the said company made, signed, sealed, and delivered to said Barnes, trustee, a certain indenture of supplemental mortgage or deed of trust; that immediately thereafter the said Barnes caused said supplementary mortgage to be recorded, as, in the same offices as the said first-named deed of trust or mortgage to said Barnes was recorded, as herein before set forth; a copy of which said first mortgage or deed of trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes are attached to the amended bill of complaint in this cause, and marked, respectively, Exhibit No. 1 and Exhibit No. 2.

That about the 1st of February, A. D. 1859, the said company having made default in the payment of, or part of, the interest due on said bonds secured as aforesaid; the said William Barnes assuming to act under the provisions contained in said mortgages or deeds of trust, proceeded to the foreclosure of said mortgages by ad-
339 vertisement, and having previously given the notice required by the deed of trust, on the 21st day of May, A. D. 1859, said William Barnes, trustee, sold at public auction, at the court-house, in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mortgages to him, said Barnes, described; and the said William Barnes, trustee, then and there at said sale became the purchaser thereof, at and for the sum of one million five hundred ninety-three thousand three hundred and thirty-three dollars and thirty-three cents ($593,333 33,) no other person or body having made any bid whatever for the same in trust for the holders of the then outstanding bonds secured by said mortgages; and after-

wards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the then outstanding bonds proceeded to organize anew, and then and there elected directors and took the corporate name Milwaukee and Minnesota Railroad Company, and said Barnes then and thereafter conveyed to said last-named company all the property and things by him purchased as aforesaid. The said bondholders at said new organization elected and chose the following named persons directors of said Milwaukee & Minnesota Railroad Company, viz: Russell Sage, N. J. Emmons, Hans Crocker, William E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William R. Sill, and ——— Battershall, and said directors immediately thereafter organized the said board of directors by electing and choosing Russell Sage, president, N. J. Emmons, vice president, and Dwight W. Keyes, secretary, of said Milwaukee & Minnesota Railroad Company, and that neither the La Crosse & Milwaukee Railroad Company, nor any subsequent encumbrancer or encumbrancers, nor any other person or persons did, within one year of said sale, redeem, or offer to redeem, the property and things so sold under said mortgages or trust deeds according to law in that behalf.

This stipulation is made to save the expense of proving the facts admitted; but it is not to be construed as waiving any objection to any of the facts so admitted on the ground of materiality or relevancy, nor as admitting or conceding any legal consequences from the facts admitted.

Dated June 6, 1865.

M. H. CARPENTER,
Sol. for Complainant.
EMMONS & VAN DYKE,
Sol'rs for Defendant.

340 *Stipulation as to articles of organization of Milwaukee & Minnesota Railroad Company.*

Circuit court of the United States for the district of Wisconsin.

THE MILWAUKEE & MINNESOTA Railroad Company
vs.
SELAH CHAMBERLAIN.

The respective parties hereby stipulate, at request of complainant, that the annexed printed copy of the articles of organization of the complainant may be read in evidence on the hearing of this cause, with the same effect and subject to the same objections as though the original was produced, duly proven, and given in evidence before the examiner as testimony in this cause; and that the original was recorded as purports from this copy.

Dated June 8, 1865.

MATT. H. CARPENTER,
Sol. for Complainant.
EMMONS & VAN DYKE,
Sol'rs for Defendant.

341 *Articles of organization of the Milwaukee and Minnesota Railroad Company.*

Whereas the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, on the twenty-first day of June, A. D. 1858, duly executed to William Barnes a mortgage deed for the purpose of securing the payment of bonds to the amount of two millions of dollars, with the interest coupons attached, which was recorded in the office of the secretary of state of the State of Wisconsin in the book of railroad mortgages, on pages 342 to 348, inclusive, on the 8th day of July, A. D. 1858.

And whereas, also, the said La Crosse and Milwaukee Railroad Company, on the eleventh day of August, A. D. 1858, duly executed to the said Barnes a supplementary mortgage, or trust deed, for the purposes aforesaid, which was recorded in the office of the secretary of state of the State of Wisconsin in the book of railroad mortgages, on pages 349 to 361, inclusive, on the first day of September, A. D. 1858, whereby all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse in said State, a distance of about two hundred miles, constructed and to be constructed; and also all the railroad of said company, commencing in the village of Madison in said State, and running from thence by the way of Portage City to the St. Croix river or lake in said State, a distance of about two hundred and sixty-eight miles, constructed and to be constructed; and also all the railroad of said company commencing in the village of Columbus, in said State, and running from thence to Portage City in said State, a distance of about forty miles, constructed and to be constructed, and all other railroads built and to be built and constructed by said company, or which they have a right to construct, by or under any corporate or other rights, privileges, or franchises granted or given to said company by the legislature of the State of Wisconsin, or from any
342 other source, or in any other manner whatever, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constituted or might thereafter constitute or be part of or appertain to said railroads, and including, also, all and singular the lots, land, and real estate whatsoever which the said company owned or might thereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or thereafter to be made thereon; and all rights of dockage and wharfage, and all other riparian rights and privileges and franchises appertaining thereto, as particularly described in the various deeds of the same to said company; and also all and singular the superstructure of said railroads, whether then made and constructed or thereafter to be constructed, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads built or thereafter to be

built and constructed; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description procured or thereafter to be procured for or used in said railroads, and all the materials, tools, implements, and utensils, and other personal property procured or thereafter to be procured for or used in connection with said railroads; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description; and also all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under or by virtue of the act of Congress approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," and the act of the legislature of the State of Wisconsin, approved October 11, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3. 1856," together with all and singular the hereditaments and appurtenances belonging to or in any wise appertaining to the said lands; and also all and singular the bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action of whatsoever nature, owned wholly or in part by said railroad company on such day as the said railroad company might first make
343 default in the payment of the principal or interest which might thereafter become due on any of the said bonds issued by said company, under said trust deeds or mortgages, and all the property, real, personal, and mixed, of said railroad company, then acquired and vested, or thereafter to be acquired and vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as if said railroads had been entirely built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature of the State of Wisconsin, fully designated and duly patented and conveyed to said railroad company according to the provisions of the said acts, were conveyed to said Barnes, to be held by him in trust for and as security to the bondholders of said company for the payment of the said bonds, with the interest thereon secured by said mortgage deeds:

And whereas, by said trust or mortgage deeds, it was provided that if said railroad company should make default for the space of fifteen days in the payment of any of the interest warrants or coupons accompanying the said bonds, as they respectively became due, or if default for the like period should be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds secured by said mortgage deeds, then, and in either of said cases, the said Barnes as trustee was authorized in his discretion to enter into and take possession of all and singular the railroads and all the other property, real, personal, and mixed, covered or conveyed, or intended to be covered or conveyed, by said trust deeds, with all the rights, liberties, privileges, and franchises of said company, and to take and

secure the income and profits thereof, and to sell all and singular said railroads and said other property, real, personal, and mixed, with all the rights, liberties, privileges, and franchises of said railroad company, covered or conveyed, or intended to be covered or conveyed by said mortgage deeds, either at public or private sale. And, also, that on the written request of the holder or holders of said bonds, then outstanding to the amount in the aggregate of one hundred thousand dollars, he should proceed to make such sales and conveyances for the purpose of paying the outstanding bonds and the interest thereon; but in case of any sale at auction, it was provided that notice of such intended sale should be published once in each week for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and that on such sale the said Barnes should execute and deliver to the purchaser or purchasers deeds and conveyances, which
344 should vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of the undersigned trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

And whereas the interest which became due on the first day of January, A. D. 1859, upon the bonds issued by said company, secured by the mortgage deeds aforesaid, amounting to about the sum of seventy thousand dollars, was paid not by said company when it became due, and said company having made default in such payment for the space of more than fifteen days; and whereas, also, holders of said outstanding bonds, amounting in the aggregate to the sum of over one hundred thousand dollars, have duly requested in writing, in compliance with said mortgage deeds, that the said trustees should proceed to make such sale and conveyances as aforesaid.

And whereas, also, the said trustee, in conformity to the provisions of said trust or mortgage deeds, has duly published notice of such intended sale once in each week for three weeks in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, in the State of Wisconsin, which notice of sale was given for the twenty-sixth day of March, A. D. 1859, at the court-house in the city of Milwaukee, at twelve o'clock noon of that day.

And whereas said sale was on the said twenty-sixth day of March, A. D. 1859, duly adjourned and postponed to the twenty-third day of April, A. D. 1859, at twelve o'clock noon of said day, at the same place, which adjournment was duly advertised once in each week for three weeks in said newspapers. And whereas said sale was again, on the said twenty-third day of April, A. D. 1859, duly adjourned to the twenty-first day of May, A. D. 1859, at twelve o'clock noon of that day, at the same place, which last adjournment was duly advertised once in each week for three weeks in said newspapers.

And whereas the said sale was on said last-mentioned day duly made as provided in said trust or mortgage deeds, and William Barnes, the said trustee, became the successful bidder and purchaser at such sale in trust for the bondholders, in conformity to the laws of the

State of Wisconsin, and the provisions of an act approved by the governor of said State on the ninth day of February, A. D. 1859, entitled "An act supplemental to chapter seventy-nine of the Revised Statutes, entitled, 'of railroads,'" for the price or sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, being seventy-five per cent. of the
345 amount due for principal and interest on the bonds outstanding and secured by said deeds, or thereabouts; be the same more or less, he, the said William Barnes, trustee as aforesaid, being the highest and best bidder at such sale.

Now, therefore, this indenture witnesseth, that the said William Barnes, purchaser as aforesaid, does hereby acknowledge, testify, and declare that his title acquired by the said purchase to the railroads, appurtenances, franchises, and property, particularly described in the mortgage or trust deeds to him executed by the said La Crosse and Milwaukee Railroad Company, as above recited, was taken and is held by him in trust for the holders of the bonds secured by the said mortgage or trust deeds.

And the said William Barnes, as such purchaser in trust, as aforesaid, and the holders of said bonds who execute these presents, associates of the said William Barnes, do hereby, in pursuance of the statute in that case made and provided, proceed to organize anew and elect directors, and provide for the distribution and disposal of stock under the name hereafter mentioned in that behalf, under the charter of the said La Crosse and Milwaukee Railroad Company, with the variations in manner and form of organization required by their altered circumstances and better convenience, and for that purpose do hereby adopt and establish the following articles of organization:

ARTICLE 1. For the purposes aforesaid, the parties hereto do hereby organize themselves anew as a corporation or body corporate under the name of the Milwaukee and Minnesota Railroad Company, by the corporate name to have, possess, exercise, and enjoy all the corporate or other rights, powers, privileges, and franchises granted to or conferred upon the La Crosse and Milwaukee Railroad Company aforesaid by the several acts of the legislature of the State of Wisconsin following, to wit: An act to incorporate the La Crosse and Milwaukee Railroad Company, approved on the second day of April, 1852; and all acts of the said legislature amendatory of or supplemental to the said act, and all other acts of the said legislature now in force relating to or binding upon the said La Crosse and Milwaukee Railroad Company, and particularly "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled, "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' appeared June 3, 1856," which said last-mentioned act of the said legislature was approved on the eleventh day of October, A. D. 1856; and all acts amendatory or supple-
346 mental to said last-mentioned act, and by chapter seventy-nine of the Revised Statutes of the said State, entitled, "of railroads," and every other general law of the said State in that behalf

made and provided; subject to all duties, restraints, and liabilities created or imposed by law upon the said La Crosse and Milwaukee Railroad Company, and upon railroads in the said State generally, so far as the same may be applicable.

ARTICLE 2. The said William Barnes, for and in consideration of the premises above cited, doth hereby grant, bargain, sell, convey, transfer, assign, set over, and confirm unto the said Milwaukee and Minnesota Railroad Company all and singular the railroads, appurtenances, franchises, and property, real and personal, rights and choses in action of whatever name or description herein above mentioned, and more particularly described in the above-mentioned mortgages or trust deeds, as fully as if the same were herein particularly set forth and described, and all the right, title, and interest of him, the said William Barnes, therein or thereto vested in him by the said mortgages or trust deeds, and by the said sale and purchase thereunder, to have and to hold the same unto the said Milwaukee and Minnesota Railroad Company, their successors and assigns for their sole use forever.

ARTICLE 3. The capital stock of the said Milwaukee and Minnesota Railroad Company is hereby fixed and the sum of two and a half millions of dollars, divided into twenty-five thousand shares of one hundred dollars each, with liberty, nevertheless, to the said Milwaukee and Minnesota Railroad Company to increase the said capital stock, under and in conformity to the laws of the said State, to a sum not exceeding five millions of dollars.

ARTICLE 4. The stockholders of the said Milwaukee and Minnesota Railroad Company are the holders of the said bonds, secured by the said mortgages or trust deeds, for whose benefit the said sale and purchase was made by the said William Barnes, and such other persons as shall hereafter associate themselves with them by subscription to the said capital stock or other proper means.

Each holder of the said bonds, upon surrendering his bonds to the proper officer of the said Milwaukee and Minnesota Railroad Company, shall be entitled to receive a certificate of stock in the company hereby organized of an equal amount with the principal of the bonds so surrendered by him, subject, nevertheless, to the payment in money of the pro rata share of the costs, charges, and expenses of the said sale and of this organization, and of carrying the same
347 into effect, being the proportion of the whole of such costs, charges, and expenses as the amount of stock so to be issued shall bear two millions of dollars.

ARTICLE 5. The payment of the said pro rata share of such costs, charges, and expenses is hereby declared to be a charge and lien upon the stock to which each holder of the said bond is entitled; and the board of directors of the said Milwaukee and Minnesota Railroad Company shall have power to declare the right to such stock forfeited by the non-payment of such pro rata share of such costs, charges, and expenses, in such manner as the said board of directors shall determine.

ARTICLE 6. The board of directors of the said Milwaukee and Min-

nesota Railroad Company shall consist of nine persons, and the following persons are hereby appointed and elected directors of the said company, and shall constitute the first board of directors of the said Milwaukee and Minnesota Railroad Company, and shall hold their offices as such until the last Wednesday of May next, (1859,) and thereafter until their successors are duly elected in their place: Russell Sage and Ludlow A. Battershall, of Troy, New York; William Gould, of Albany, New York; William B. Gilbert, of Syracuse, New York; Hans Crocker, Norman J. Emmons, and Lemuel W. Weeks, of Milwaukee, Wisconsin; William R. Sill, of La Crosse, Wisconsin; and William E. Smith, of Fox Lake, Wisconsin.

The directors hereafter to be elected shall be so elected in *in* pursuance of the provisions of law regulating the election of directors of the said La Crosse and Milwaukee Railroad Company.

ARTICLE 7. The said board of directors shall meet at the office of the said Milwaukee and Minnesota Railroad Company on this day, and proceed to elect and appoint the officers of the said Milwaukee and Minnesota Railroad Company, and provide for a corporate seal.

ARTICLE 8. These articles are executed in duplicate, both duplicates executed by the said William Barnes, and by the holders of a majority the said bonds, setting opposite to their names and seals the amount of bonds respectively held by them. When one of the said duplicates shall have executed by the holders of a majority of said bonds it shall be sent for record to the office of the secretary of state of the said State, and the other duplicate shall be retained in the office of the said Milwaukee and Minnesota Railroad Company for further execution by the holders of said bonds, and when so further executed, may be in like manner recorded in the office of the said secretary of state.

348 ARTICLE 9. The organization of the Milwaukee and Minnesota Railroad Company is hereby declared to be complete in fact.

In witness whereof the said William Barnes and the bondholders whose names are under written, have hereto set their hands and seals at the city of Milwaukee, in the State of Wisconsin, on the twenty-third day of May, in the year one thousand eight hundred and fifty-nine.

WILLIAM BARNES, [SEAL.]

Russell Sage	$80,000	[L. S.]
L. D. Coman, by Russell Sage, his att'y	24,000	[L. S.]
L. A. Battershall, by Russell Sage, his att'y	50,000	[L. S.]
R. Pardow, jr., by Russell Sage, his att'y	20,000	[L. S.]
L. H. Buell, by Russell Sage, his att'y	18,000	[L. S.]
H. G. Gilbert, by Russell Sage, his att'y	50,000	[L. S.]
Roscius R. Kennedy, by Russell Sage, his att'y	75,000	[L. S.]
Alfred Noxon, by Russell Sage, his att'y	17,000	[L. S.]
George F. Gray, by Russell Sage, his att'y	20,000	[L. S.]
J. M. Lovett, by Russell Sage, his att'y	50,000	[L. S.]
S. H. Alden, by Russell Sage, his att'y	30,000	[L. S.]

	William Gould, by Russell Sage, his att'y	$50,000	[L. S.]
	J. F. Frost, by Russell Sage, his att'y	3,000	[L. S.]
	William Watson, by Russell Sage, his att'y	56,500	[L. S.]
	Eli King, by Russell Sage, his att'y	40,000	[L. S.]
	J. Templeton, by Russel Sage, his att'y	5,000	[L. S.]
	S. R. Foster, by Russell Sage, his att'y	20,000	[L. S.]
349	A Fleming, by Russell Sage, his att'y	20,000	[L. S.]
	George W. McLean, by Russell Sage, his att'y	10,000	[L. S.]
	Stoddard Judd, trustee	544,950	[L. S.]
	E. Cramer	5,500	[L. S.]
	Ax. Mitchel	6,000	[L. S.]
	C. Hawley	7,400	[L. S.]
	William B. Gilbert	30,000	[L. S.]
	John W. Davis	20,000	[L. S.]
	William R. Sill	500	[L. S.]
	H. Crocker	500	[L. S.]
	R. S. Kneeland	3,800	[L. S.]
	H. H. Wheelock, by R. S. Kneeland, his att'y	1,900	[L. S.]
	John C. Denison, by R. S. Kneeland, his att'y	300	[L. S.]
	J. H. Wheelock, by R. S. Kneeland, his att'y	1,000	[L. S.
	H. Beckwith, by R. S. Kneeland, his att'y	300	[L. S.]
	Nathan Parker, by R. S. Kneeland, his att'y	200	[L. S.]
	F. Sassinguth, by R. S. Kneeland, his att'y	400	[L. S.]
	W. E. Smith	500	[L. S.]
	William Barnes	10,000	[L. S.]
	E. G. Ryan	9,500	[L. S.]
	John S. Rockwell	22,000	[L. S.]

Sealed and delivered in our presence by William Barnes, Russell Sage, L. D. Coman, L. A. Battershall, R. Pardow, jun'r, L. H. Buel, H. G. Gilbert, Rocius R. Kennedy, Alfred Noxon, George T. Grey, J. M. Lovett, S. H. Alden, William Gould, J. F. Frost, William Watson, Eli Kelly, J. Templeton, S. R. Foster, A. Fleming, and George W. McLean, by Russell Sage, their attorney; Stoddard Judd, E. Cramer, Alexander Mitchell, C. Hawley, W. B. Gilbert, John W. Davis, William R. Sill, H. Crocker, R. S. Kneeland, H. H. Wheelock, John C. Denison, J. H. Wheelock, H. Beckwith, Nathan Parker, and J. Sassurgarth, by R. S. Kneeland, their attorney; W. E. Smith, William Barnes, E. G. Ryan, and John S. Rockwell.

JAS. G. JENKINS, *Milwaukee.*
HENRY SANDES, *Milwaukee.*

350 STATE OF WISCONSIN, *County of Milwaukee, ss:*

On this twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty-nine, before me personally came William Barnes, Russell Sage, and Russell Sage, attorney for L. D. Coman, L. A. Battershall, R. Pardow, jr., L. H. Buel, H. G. Gilbert, Roscius R. Kennedy, Alfred Noxon, George T. Gray, J. M. Lovett,

S. H. Alden, William Gould, J. F. Frost, William Watson, Eli Kelly, J. Templeton, S. R. Foster, A. Fleming, and George W. McLean; Stoddard Judd, E. Cramer, Alexander Mitchell, C. Hawley, W. B. Gilbert, John W. Davis, William R. Sill, H. Crocker, R. S. Kneeland, and R. S. Kneeland, as attorney for H. H. Wheelock, John C. Denison, J. H. Wheelock, H. Beckwith, Nathan Parker, and F. Sussurgirth; W. E. Smith, William Barnes, E. G. Ryan, and John S. Rockwell, to me known to be the same persons described in, and who executed, the foregoing instrument, and severally acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this twenty-third day of May, in the year one thousand eight hundred and fifty-nine.

[L. S.]

JAS. G. JENKINS,
Notary Public, Milwaukee Co., Wis.

Duplicate A.

STATE OF WISCONSIN, *Secretary's Office, ss:*

Received for record, May 24th, A. D. 1859, at nine o'clock a. m., and recorded in book of railroad mortgages, on pages 404 to 410, inclusive.

J. D. RUGGLES,
Ass't Sec'y of State.

351 *Copy of agreement.*

Green C. Bronson and James T. Soutter, of the city and State of New York, trustees named in the mortgage or deed of trust made by the La Crosse and Milwaukee Railroad Company on the 17th day of August, 1857, to secure the payment of the bonds of the company to the amount of one million of dollars therein mentioned, and the interest on the same, by the terms of which mortgage or deed of trust the trustees, upon default made by said company or its assigns in the payment of the interest warrants or coupons on said bonds, or any of them, claim the right to demand and receive possession of all and singular the railroad and other property covered by and included in the said mortgage or deed of trust, and to sell the same as therein provided; and Selah Chamberlain, who is in possession of that portion of the railroad and other property pertaining thereto, covered by and included in said mortgage or deed of trust, extending from Milwaukee to Portage City, as well as the western end of the so-called the La Crosse and Milwaukee railroad, extending from Portage City to La Crosse, and is operating said road or roads under and by virtue of a sealed instrument commonly called a lease or mortgage, executed by the La Crosse and Milwaukee Railroad Company, dated September 26th, 1857, by the terms of which instrument the said Chamberlain was directed by the said company and did stipulate, among other things to be done and payments to be

made, that he would, from the net earnings or revenue of the said railroad, pay the interest warrants or coupons upon the said one million dollars of the bonds described in said mortgage or deed of trust, as the same should become due and payable; and default having been made upon the interest warrants or coupons aforesaid due and payable at the Bank of the Republic in the city of New York on the first day of September, 1859, and the said trustees having, in consequence of such default, for the space of more than sixty days, become entitled to demand, and having demanded possession of the said railroad and other property covered by and included in said mortgage or deed of trust from the said Chamberlain; and said Chamberlain claiming the right to retain the possession of the said railroad and property, and to operate the same during the progress of legal proceedings for the foreclosure and sale of the same by said trustees, and being willing that the earnings and revenues of said railroad and the disbursements of the same according to the terms and spirit of the provisions of the instrument under which
352 his right of possession accrued, and the said trustees being desirous of satisfying their bondholders or cestui que trust under the said mortgage or deed of trust of the application of the entire receipts and revenues of said railroad and property to the purposes expressed in the instrument, lease, or mortgage, under and by virtue of which said Chamberlain holds possession of said road, and the said Chamberlain being willing that they should enjoy every facility thereto, and both parties being desirous of avoiding litigation as far as the same can be done, do agree to and with each other as follows:

First. The said Selah Chamberlain shall retain and have the actual possession, to all intents and purposes, *to all intents and purposes*, of the said railroad and other premises and things to him granted in and by the said instrument of lease or mortgage, and the control and management of the railroad in its various departments, as is intended he should have in and by said instrument of mortgage or lease, reference being hereby made to said lease or mortgage, and the supplemental or explanatory part thereof, between said Chamberlain and the La Crosse and Milwaukee Railroad Company, by an instrument dated September 28, 1857, and the resolution of said company, dated the 21st day of October, 1858, but the said Chamberlain does agree, and in order to carry out the intent and purpose aforesaid, that he will cause to be paid to or deposited with the said trustees, or with such agent or cashier as they may nominate and appoint, all the earnings and revenue of said railroad, that is to say, all the earnings and revenues of the eastern division of said road, of which said Chamberlain is in possession, including all the revenues or receipts from the use of the rolling stock on any other part or portion of the so-called La Crosse and Milwaukee railroad, from day to day, as the same may be earned and received, and to that end, intent, and purpose, will instruct the officers, agents, and servants under him; and the said trustees, on their part, do covenant and agree that they will appropriate, pay out, and disburse the earnings and revenues of said eastern division of said

road, so by them to be received, or intended to be received, to the actual uses and purposes and objects intended and contemplated in and by the said lease or mortgage to said Chamberlain, and that they will so appropriate, pay, and disburse said earnings and revenues from day to day, or month to month, as the exigencies and proper operating of said road, or the other provisions in said lease or mortgage, may require. The operating expenses, to be paid by
353 said trustees, as aforesaid, shall include those accruing during the month of November.

In order that the said trustees may actually have and enjoy the privileges and right of circumspection over the earnings and revenues of said road, and the receipts, control, and disbursement thereof, as aforesaid, the said Chamberlain does agree that at any time or times when upon good cause shown to him by the said trustees that any officer, agent, or servant under him, who may, in his capacity, be in the receipt of any earnings or revenue, or in the authority of any accounts or outlays, is, or has been, guilty of any wilful dereliction of duty in his said employment as such officer, agent, or servant, he, the said Chamberlain, shall discharge such officer, agent, or servant, and appoint in his stead such suitable person as the said Chamberlain and the said trustees may agree upon, the said trustees having the right of nomination.

In order to facilitate and aid the said trustees in the enjoyment and exercise of the rights and privileges herein accorded and given to them, the said Chamberlain hereby agrees to furnish and give to them access to any and all books and papers relating to his management of said road the same as he is required to do to said La Crosse and Milwaukee Railroad Company under his said lease or mortgage. This agreement is to take effect on the first day of December, A. D. 1859.

It is further understood that the trustees may, if they see fit, make such allegations as they may be advised to entitle them to a receiver, and also may file the usual motion therefor, but no receiver shall be appointed, and no further steps shall be take therefor so long as the said Chamberlain shall continue to act upon and fulfil this agreement; and in case of the violation of any material part hereof, then said trustees may proceed for a receiver the same as though this agreement had never been made. And the said Selah Chamberlain further agrees that he will not, during the continuance of this agreement, part with or transfer the possession of said road, nor any of its equipment covered by and included in the said mortgage or deed of trust, to any person or persons, or corporation whatever, unless upon payment to him by the La Crosse and Milwaukee Railroad Company, or those lawfully claiming under it, the right to redeem said Chamberlain's encumbrance and claim from him his said possession, in which case this agreement shall cease and determine.

It is agreed that the proceedings to foreclose shall be conducted amicably so far as the parties hereto are concerned, and that
354 their respective counsel shall aid in carrying out the spirit of this agreement. A decree of foreclosure may be procured by

the joint efforts of the counsel of both parties, to secure, if practicable, the sale of said road and premises, subject to the mortgage or deed of trust hereinbefore mentioned, and with the view of giving and securing to said Chamberlain every facility in becoming the purchaser under such foreclosure, (provided that nothing herein contained shall preclude the trustees from bidding at such sale for the protection of the interest of the bondholders.) The trustees will make no opposition to the establishment by said Chamberlain of his claims upon the said La Crosse and Milwaukee Railroad Company as next in order to said mortgage or deed of trust; and if this form of decree should prove impracticable or be refused by the court in which proceedings may be pending, the trustees will consent to any other form of decree which the counsel for the respective parties hereto may think best adapted to protect the claims and interest of the said Chamberlain in the right of standing next in order to the said mortgage or deed of trust, securing however, to the bondholders under the same all their rights of priority.

If the said Chamberlain shall become the purchaser of the road and property aforesaid under a decree of foreclosure and sale, the trustees will extend a credit of nine and twenty four months upon so much of the arrears of interest as may remain due to the holders of the one million of dollars of the bonds of said company, issued under and secured by the aforesaid mortgage or deed of trust, and be included in the decree of foreclosure and sale, not exceeding in amount two coupons in each bond, and receipt for the same to the officer making such sale as so much cash, taking from the said Chamberlain such reasonable security for the payment thereof and the interest thereon, at the rate of eight per cent. per annum, as may be satisfactory to the trustees, but such security shall be perfected by the said Chamberlain on or before the time of making such sale.

The said trustees shall, as far as practicable, procure from the bondholders represented by them full and perfect authority to make such arrangements for the liquidation, exchange or payment and cancellation of their said bonds as may best promote the objects to be obtained by the foreclosure of the mortgage or deed of trust,
355 and perfecting the sale of the road and property covered by and included therein, and shall, if possible, procure the said bonds to be deposited with them in trust for the accomplishment of these objects.

It is understood and agreed that whereas the said trustees are acting in such a capacity as to limit the responsiblity assumed by them, within the scope of powers conferred by their trusts, that they shall only be held liable for the use of their best exertions, in good faith to carry out their part of this agreement to the full extent of their powers as trustees, and when the stipulations cannot be either legally or practically performed, or when by the performance the trustees would render themselves personally responsible to the bondhodlers, that they shall be held released and absolved therefrom.

In testimony of all which, the parties to these presents have hereunto set their hands and seals at Milwaukee, this thirtieth day of

November, in the year of our Lord one thousand eight hundred and fifty-nine.

[SEAL.] GREEN C. BRONSON.
[SEAL.] JAMES T. SOUTTER.
By their attorneys in fact, F. A. PALMER,
PRENTIS DOW,
[SEAL.] SELAH CHAMERLAIN.

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.

The respective parties hereto stipulate that the foregoing printe copy of agreement on printed pages marked 76, 77, 78, and 79, is a true copy of the original, and that on the hearing of this cause said copy may be read in evidence with the same effect, but subject to the same objection and exceptions, as the original if duly produced and proved before the examiner.

Dated June 5, 1865.

MAT. H. CARPENTER,
Sol. for Complainant.
EMMONS & VAN DYKE,
Sols. for Deft.

The Milwaukee and Minnesota Railroad Company further read in evidence the proceedings in foreclosure of the Barnes mortgages, as follows:

356 *Proceedings on foreclosure of 3d mortgage.*

Whereas the La Crosse and Milwaukee Railroad Co., a corporation duly constituted by the laws of the State of Wisconsin, on the 21st day of June, A. D. 1858, duly executed to the undersigned a mortgaged deed for the purpose of securing the payment of bonds to the amount of two millions of dollars, with interest coupons thereto attached, which was recorded in the office of the secretary of state of Wisconsin, in the book of railroad mortgages, on pages 342 to 348, inclusive, on the 8th day July, A. D. 1858.

And whereas also the La Crosse and Milwaukee Railroad Co., on the 11th day of August, A. D. 1858, duly executed to the undersigned a supplementary mortgage or trust deed for the purposes aforesaid, which was recorded in the office of the secretary of the state of Wisconsin, in the book of railroad mortgages, on pages 349 to 361, inclusive, on the 1st day of September, A. D. 1858, whereby all and singular the railroad of said co., commencing in the city of Milwaukee, and running from thence to La Crosse in said State, a distance of about 200 miles, constructed and to be constructed, and

also all the railroad of said company commencing in the village of Madison, in said State, and running from thence, by way of Portage City, to St. Croix river or lake, in said State, a distance of about 268 miles, constructed and to be constructed, and also all the railroad of said company, commencing in the village of Columbus, in said State, and running from thence to Portage City, in said State, a distance of about 40 miles, constructed and to be constructed, and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises, granted or given to said company by the legislature of the State of Wisconsin, or from any other source or in any other manner whatever, including all and singular the several tracts, pieces, or parcels of land which constituted, or might thereafter constitute, the site of roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the
357 other lands and real estate which constituted, or might thereafter constitute, or be a part of or appertain to said railroads; and including also all and singular the lots, lands, and real estate whatsoever which the said company owned or might thereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or thereafter to be made thereon, and all rights of dockage and wharfage, and all other riparian rights and privileges and franchises appertaining thereto, as particularly described in the various deeds of the same to said company; and also all and singular the superstructure of said railroads, whether then made and constructed or thereafter to be constructed, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, built or thereafter to be built and constructed, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, procured or thereafter to be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property procured or thereafter to be procured for or used in connection with said railroads; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description, and also all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of the act of Congress approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," and the act of the legislature of the State of Wisconsin, approved October 11th, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3d, 1856, together with all and singular the hereditaments and appurte-
358 nances belonging or in any wise appertaining to the said lands; and also all and singular the bonds, bills of exchange,

promissory notes, accounts, causes of action, demands, and choses in action of whatsoever nature, owned wholly or in part by said railroad company, on such day as the said railroad company might first make default in the payment of the principal or interest which might thereafter become due on any of the said bonds, issued by said company under said trust deeds or mortgages, and all the property, real, personal, and mixed, of said railroad company, then acquired and vested, or thereafter to be acquired and vested, together with all the rights, liberties, privilege, and franchise of said railroad company, as fully and amply as if said railroads had been entirely built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature of the State of Wisconsin fully designated and duly patented, and conveyed to said railroad company, according to the provisions of said acts, were conveyed to the undersigned, to be held by him in trust for and as security to the bondholders of said company for the payment of the said bonds with the interest thereon secured by said mortgage deed.

And whereas, by said trust or mortgage deeds, it was provided that if said railroad company should make default for the space of fifteen days in the payment of any of the interest warrants, or coupons accompanying the said bonds as they respectively become due, or if default for the like period should be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds secured by said mortgage deeds, then and in either of said cases the undersigned, as trustee, was authorized in his discretion to enter into and take possession of all and singular the railroads and all the other property, real, and personal, and mixed, covered and conveyed, or intended to be covered or conveyed, by said trust deeds, with all the rights, liberties, privileges, and franchises of said company, and to take and receive the income and profits thereof, and to sell all and singular said railroads and said other property, real, personal, and mixed, with all the rights, liberties, privileges, and
359 franchises of said company, covered and conveyed, or intended to be covered and conveyed, by said mortgage deeds, either at public or private sale; and also that on the written request of the holder or holders of said bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, the undersigned should proceed to make such sales and conveyances for the purpose of paying the said outstanding bonds and the interest thereon; but in case of any sale at auction it was provided that notice of such intended sale should be published once in each week for three weeks at least in the two newspapers published in the city of Milwaukee, and that on such sale the undersigned should execute and deliver to the purchaser or purchasers deeds and conveyances, which should vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of the undersigned trustee and said railroad company of, in, and to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof; and whereas the interest that became due on the first day of Jan'y, A. D. 1859, upon all of the bonds issued by said company or secured by the mort-

gage deeds aforesaid, amounting to the sum of about seventy thousand dollars was not paid by said company, when it became due, and said company having made default in such payment for the space of more than fifteen days.

And whereas, also, the holders of said outstanding bonds, amounting in the aggregate, to the sum of over one hundred thousand dollars, have duly requested in writing, in compliance with said mortgage deeds, that the undersigned should proceed to make such sales and conveyances as aforesaid, as by their written request hereto annexed will more fully appear.

And whereas the undersigned, the said William Barnes, in compliance with such request, did cause due notice of such sale at auction, signed by said William Barnes, and bearing date the twenty-fourth day of February, 1859, to be published once in each week for three successive weeks next before the twenty-sixth day of March, A. D. 1859, in the Milwaukee Free Democrat, a daily newspaper published in the city of Milwaukee and State of Wisconsin,
360 and in the New York Times, and the New York Daily Tribune, daily newspapers published in the city of New York, in compliance with the provisions of the said mortgage or trust deeds, giving notice that in pursuance of the authority vested in the undersigned by the said mortgage deeds, should the undersigned should expose for sale at auction to the highest bidder, in conformity to law, at the court-house in the city of Milwaukee, in said State of Wisconsin, on the twenty-sixth day of March, A. D. 1859, at twelve o'clock a. m. of that day, all and singular the said railroads, and real, personal, and other property of whatsoever nature, covered by said trust deeds, together with all the said rights, privileges, and franchises appertaining thereto; and also all the corporate and other rights, privileges, and franchises appertaining thereto; and also all the corporate and other rights, privileges, and franchises of the said La Crosse and Milwaukee Railroad Company, which may be included in, covered or conveyed, or intended to be covered or conveyed by said mortgage deeds, in order to pay the said outstanding bonds and interest, and the costs and expenses of that sale. And whereas the sale thereby advertised was by the undersigned, on the twenty-sixth day of March, A. D. 1859, postponed and adjourned to the twenty-third day of April, 1859, at twelve o'clock m. of that day, at the court-house in the city of Milwaukee aforesaid, and the undersigned did thereupon cause a notice, by him signed, of such postponement and adjournment, and that such sale would would accordingly take place on the day and at the place last mentioned, to be published in the said newspapers once a week for three successive weeks immediately preceding the said twenty-third day of April, A. D. 1859; and whereas the sale thereby advertised was by the undersigned, on the twenty-third day of April, A. D. 1859, postponed and adjourned to the twenty-first day of May, A. D. 1859, at twelve o'clock m. of that day at the court house, in the city of Milwaukee aforesaid, and the undersigned did thereupon cause a notice, by him signed, of such postponement and adjournment, and that such sale would ac-

361 cordingly take place at the day and at the place last mentioned, to be published in the said newspapers once in each week for three successive weeks immediately preceding the said twenty-first day of May, A. D. 1859, as by printed copies of the said notice of sale, and of the said two several notices of adjournment, together with the affidavit of the publication thereof in the said newspapers hereto annexed will more fully and at large appear; and whereas, on the said twenty-first day of May, A. D. 1859, I, the said William Barnes, the trustee named in the said mortgage or trust deeds, did make the sale of which said notice had been given in the manner hereinafter certified and declared:

Now, know all men by these presents that I, the said William Barnes, the trustee named in the said mortgage or trust deeds, do hereby certify and declare that in pursuance of the authority in me vested by the said mortgage or trust deeds, and of the statutes of the State of Wisconsin in such made and provided, and of the said notice and sale, and of the said notices of adjournment and postponement thereof, I, the said William Barnes, trustee as aforesaid, did, on the said twenty-first day of May, A. D. 1859, at twelve o'clock m. of that day, attend at the court-house in the city of Milwaukee, and did then and there read the said notices of sale, and of adjournment and postponement thereof, and did thereupon then and there put up for sale, at public auction, upon the steps of the said court-house, and in the presence of many persons, then and there assembled, all of the railroads, and real, personal, and other property with all the rights, privileges, and franchises appertaining thereto, and all corporate and other rights, privileges, and franchises of the said La Crosse & Milwaukee Railroad Company included in, covered, or conveyed, or intended to be conveyed by the said mortgage or trust deeds, in order to pay the said outstanding bonds and interest, and the costs and expenses of that sale, and that then and there, no other person or body having made any bid for the same, I, the said

362 William Barnes, trustee as aforesaid, did bid for the same the sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, being computed to be seventy-five per cent. of the principal and of the interest on that day actually due on the outstanding bonds issued under, and secured by, the said mortgage or deed trust, in trust for the holders of such outstanding bonds, in pursuance of the statute in that case made and provided, and of the authority in me vested, and that then and there no further or other bid was made at such sale; and that therefore I, William Barnes, having waited a reasonable time, until I was satisfied that no higher bid would be made, and having given due notice thereof, did strike off the property so put up for sale, to myself, as such trustee, in trust for the holders of the outstanding bonds issued under, and secured by, the said mortgage or trust deeds, and did publicly, and in the presence of the persons present, declare myself to be the purchaser at that sale of all the property so put up for sale, as such trustee, and upon the trust aforesaid, for the said sum of one million five hundred and ninety-three thousand three

hundred and thirty-three dollars and thirty-three cents; and for a more particular description of the property so sold I do hereby annex as part of this certificate and declaration a copy of the said mortgage or trust deeds. And I do hereby certify and declare that the property so sold may be redeemed within one year from and after the said date of such sale, to wit, the *the* twenty-first day of May, A. D. 1859, and that the said sale will be absolute, unless the said La Crosse & Milwaukee Railroad Company, or some subsequent encumbrancer, shall redeem the said railroads and property so sold by paying or depositing the amount of the said bid on the said sale, and the costs of said sale, and the interest thereon, at the rate of ten per cent. per annum, with me, as such trustee, together with the value of all substantial and necessary improvements made by me, or those for whom I purchased in trust, whether in the further construction of said railroad, or for the better use and enjoyment of the
363 same, with interest thereon at the rate of ten per cent. per annum, within sixty days after the value of such improvements shall have been agreed upon between the parties interested, as determined by three commissioners to be appointed in that behalf by the Chief Justice of the Supreme Court, pursuant to the statute in that case made and provided.

In witness whereof I have hereunto set my hand and seal, this thirty-first day of May, in the year one thousand eight hundred and fifty-nine.

[SEAL.] WILLIAM BARNES.

Signed and sealed in the presence of—
JAS. G. JENKINS.
E. G. RYAN.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

William Barnes, named in the foregoing certificate, declaration, and report, being duly sworn upon oath, doth depose and say that the foregoing certificate, declaration, and report is true.

WILLIAM BARNES.

Sworn to before me, this 31st day of May, 1859.

JAS. G. JENKINS,
Notary Public, Milwaukee Co., Wis.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this thirty-first day of May, in the year of our Lord one thousand eight hundred and fifty-nine, before me, a notary public in and for the State of Wisconsin, residing in the county of Milwaukee, in said State, personally came William Barnes, to me personally known, and known to me to be the same person described in, and who executed the foregoing instrument, certificate, declaration, and report, and acknowledged to me that he executed the same freely and voluntarily.

In witness whereof I have hereunto set my hand, and affixed my official seal, at the city of Milwaukee, this thirty-first day of
364 May, in the year of our Lord one thousand eight hundred and fifty-nine.

JAS. G. JENKINS,
Notary Public, Milwaukee Co., Wis.

Whereas, under and by virtue of a deed of trust or mortgage, executed by the La Crosse and Milwaukee Railroad Company to William Barnes, dated June 21st, A. D. 1858, and recorded in the office of the secretary of state of the State of Wisconsin, in book of railroad mortgages, on pages 342 to 348, inclusive, on the 8th day of July, 1858, and of a supplementary trust deed or mortgage executed by the said company to said Barnes on the 11th day of August, A. D. 1858, and recorded in the said office on the 1st day of September, 1858, in said book of railroad mortgages, pages 349 to 361, inclusive, it was proved, in substance, that in case default should at any time be made in the payment of the interest or principal on any of the outstanding bonds, issued under said mortgages, then, and in either of said cases, said Barnes, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, should proceed to make the sales and conveyances of the property, real, personal, and mixed, and of the rights, franchises, privileges, &c., covered and conveyed by said trust deeds or mortgages. Now, therefore, we, the undersigned, holders and owners of such outstanding bonds, in the various sums set opposite our respective names, do hereby request William Barnes, the said trustee, to proceed and make such sales and conveyances as provided in said trust deeds or mortgages, either by advertisement or foreclosure, by suit in such manner as he may deem expedient. And we do hereby also request said Barnes to become the purchaser, on such sale or sales, in trust for the bondholders, at the sum of seventy-five per cent. of the amount of outstanding bonds and unpaid interest thereon, issued and registered under said trust deeds and mortgages, or at any such higher sum, not exceeding the full amount of all of said outstanding bonds and the unpaid interest thereon, in conformity to the provisions of the act passed by the legislature of Wis-
365 consin, approved by the governor on the 8th day of February, A. D. 1859, entitled "An act supplemental to chapter 79 of the Revised Statutes, entitled of railroads." And we, the undersigned, in consideration of the premises, do hereby severally promise and agree with said Barnes to pay him, and also to indemnify and save him harmless from all costs, charges, damages, and losses, of whatsoever name or nature, which he may incur or become liable for, in prosecuting, making, or defending such foreclosure and sale, and the proceedings and steps incident or necessary thereto, in proportion to the amount of said bonds by us respectively.

February 11th, 1859.

Names.	Amounts.
Russell Sage	$80,000
Alex. Mitchell	6,000
S. L. Rose	25,000
William E. Cramer	7,500
Cyrus Hawley	7,400
C. Hawley, ex'r estate of F. W. Hawley	3,000
H. J. Nazro & Co	3,000
H. Ludington & Co	1,300
Wm. P. Lynde, administrator of estate of C. K. Watkins	16,000
E. Cramer	5,500
John Cramer, by E. Cramer, his att'y	1,000
Joseph Cary	1,200
A. F. Snelflohn	800
Caswell & Gaylord	2,000
A. B. Van Cott	1,000
Chas. Schley	8,000
John S. Rockwell	22,000
Geo. Y. Grey	20,000
J. N. Lovett	20,000
J. S. Rogers, president Rogers' locomotive works	7,000
L. D. Coman	14,000
A. Fleming	20,000
G. W. McLean	10,000
366 Tracy R. Edson	900
Nezial Wright	200
W. H. Peckham	10,000

STATE OF WISCONSIN, *County of Milwaukee, ss:*

L. L. Crounse. being duly affirmed, says that he is one of the publishers of the "Milwaukee Free Democrat," a newspaper published in the city of Milwaukee, in said county, that a notice, of which the one annexed is a true copy, was duly published in such paper and in each week for four consecutive weeks, commencing on the 24th day of February, A. D. 1859, and ending on the 24th day of March, A. D. 1859.

L. L. CROUNSE.

Subscribed and affirmed to this 21st day of May, A. D. 1859, before me.

CHAS. C. PAINE,
Notary Public, Milwaukee Co., Wisconsin.

Whereas the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, on the 21st day of June, A. D. 1858, duly executed to the undersigned a mortgage deed for the purpose of securing the payment of bonds to the amount of two millions of dollars, with the interest coupons thereto attached, which was recorded in the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, on pages 342 to 348, inclusive, on the 8th day of July, 1858.

And whereas, also, the said La Crosse and Milwaukee Railroad Company, on the 11th day of August, 1858, duly executed to the undersigned a supplementary mortgage or trust deed for the purpose aforesaid, which was recorded in the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, on pages 349 to 361, inclusive, on the 1st day of September, 1858, whereby all and singular the railroad of said company, commencing
367 in the city of Milwaukee, and running from thence to La Crosse, in said State, a distance of about two hundred miles, constructed and to be constructed, and also all the railroad of said company, commencing in the village of Madison, in said State, and running from thence, by way of Portage City, to the St. Croix river or lake in said State, a distance of about two hundred and sixty-eight miles, constructed and to be constructed; and also all the railroad of said company, commencing in the village of Columbus, in said State, and running from thence to Portage City in said State, a distance of about forty miles, constructed and to be constructed, and all other railroads built or to be built and constructed by said company, or which they have a right to construct, by or under any corporate or other rights, privileges, or franchises granted or given to said company by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatever, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the right of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constituted or might thereafter constitute or be a part of or appertain to said railroads, and including also all and singular the lots, lands, and real estate whatsoever which the said company owned or might thereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or thereafter to be made thereon, and all rights of wharfage and dockage, and all other riparian rights and privileges and franchises appertaining thereto, as particularly described in the various deeds of the same to said company; and also all and singular the superstructure of said railroads, whether then made and constructed or thereafter to be constructed, and all the engine-houses, workshops,
depots, and other buildings, and all other improvements on or
368 appertaining to said railroads, built or thereafter to be built and constructed, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description procured or thereafter to be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, procured or thereafter to be procured for or used in connection with said railroads; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description; and also all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company under and by virtue of the act of Congress approved June 3d, 1856,

entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," and the act of the legislature of the State of Wisconsin, approved October 11th, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,'" approved June 3d, 1856, together with and singular the hereditaments and appurtenances belonging or in anywise appertaining to the said lands; and also all and singular the bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action, of whatever nature, owned wholly or in part by said railroad company on such day as the said railroad company might first make in default in the payment of the principal or interest which might thereafter become due on any of the said bonds issued by said company under said trust deed or mortgages, and all the property, real, personal, and mixed, of said railroad company then acquired and vested or thereafter to be acquired and vested, together with all the rights, liberties, privileges, and franchises of said railroad
369 company as fully and amply as if said railroads had been entirely built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature of the State of Wisconsin, fully designated and duly patented and conveyed to said railroad company according to the provisions of the said acts were conveyed to the undersigned to be held by him in trust for and as security to the bondholders of said company for the payment of the said bonds, with the interest thereon secured by said mortgage deeds.

And whereas by said trust or mortgage deeds it was provided that if said railroad company should make default for the space of fifteen days in the payment of any of the interest warrants or coupons accompanying the said bonds, as they respectively became due, or if default for the like period should be made in the payment, at maturity, of the principal sum of money mentioned in any of the said bonds secured by said mortgage deeds, then and in either of said cases the undersigned, as trustee, was authorized, in his discretion, to enter into and take possession of all and singular the railroads and all the other property, real, personal, and mixed, covered or conveyed, or intended to be covered or conveyed, by said trust deeds, with all the rights, liberties, privileges, and franchises of said company, and to take and receive the income and profits thereof, and to sell all and singular said railroads and said other property, real, personal, and mixed, with all the rights, liberties, privileges, and franchises of said railroad company, covered and conveyed, or intended to be covered and conveyed, by said mortgage deeds, either at public or private sale; and also that on the written request of the holder or holders of said bonds then outstanding, to the amount in the aggregate of one hundred thousand dollars, the undersigned should proceed to make
370 such sales and conveyances for the purpose of paying the said outstanding bonds and the interest thereon, but in case of any

sale at auction it was provided that notice of such intention should be published once in each week for three weeks at the least in two newspapers published in the city of New York, and a newspaper published in the city of Milwaukee, and that on such sale the undersigned should execute and deliver to the purchaser or purchasers deeds and conveyances which should vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of the undersigned trustee and said railroad company, of, in, and to the said property, rights, privileges, liberties, and franchises, and every part and parcel thereof.

And whereas the interest that became due on the 1st day of January, 1859, upon all the bonds issued by said company secured by the mortgage deeds aforesaid, amounting to the sum of about seventy thousand dollars, was not paid by said company when it became due, and said company having made default in such payment for the space of more than fifteen days.

And whereas, also, holders of said outstanding bonds, amounting in the aggregate to the sum of over one hundred thousand dollars, have duly requested in writing, in compliance with said mortgage deeds, that the undersigned should proceed to make such sales and conveyances as aforesaid.

Now, therefore, notice is hereby given that in pursuance of the authority vested in the undersigned by said mortgage deeds, I shall expose for sale at auction to the highest bidder, in conformity to law, at the court-house in the city of Milwaukee, in said State, on the twenty-sixth of March, A. D. 1859, at 12 o'clock m., of that day, all and singular the said railroad, and real, personal, and other property of whatsoever nature, covered by said trust deeds, together with all the said rights, privileges, and franchises appertaining thereto; and also all the corporate and other rights, privileges, and franchises of said La Crosse and Milwaukee Railroad Company which may be included in, covered or conveyed, or intended to be covered and
371 conveyed, by said mortgage deeds, in order to pay the said outstanding bonds and interest, and the costs and expenses of this sale.

Dated Albany, February 24th, 1859.

WILLIAM BARNES, *Trustee.*

STATE OF WISCONSIN, *Milwaukee County, ss:*

L. L. Crounse, being duly affirmed, says that he is one of the publishers of the "Milwaukee Free Democrat," a newspaper published in the city of Milwaukee, in said county; that a notice, of which the one annexed is a true copy, was duly published in such newspaper once in each week for four successive weeks, commencing on the 31st day of March, A. D. 1859, and ending on the 21st day of April, A. D. 1859.

L. L. CROUNSE.

Subscribed and sworn to, this 21st day of May, A. D. 1859, before me.

CHAS. C. PAINE,
Notary Public, Milwaukee Co., Wisconsin.

(Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement 7, 8, 9, 10, 11, 12, 13," with this addition, namely, "The above sale is hereby postponed and adjourned to, and will be made on, Saturday, the twenty-third day of April, 1859, at twelve o'clock m. of that day, at the court-house, in the city of Milwaukee, in the State of Wisconsin.

Dated Milwaukee, March 26th, 1859.

"WILLIAM BARNES, *Trustee.*")

STATE OF WISCONSIN, *Milwaukee County, ss:*

L. L. Crounse, being duly affirmed, says that he is one of the publishers of the "Milwaukee Free Democrat," a newspaper published in the city of Milwaukee, in said county; that a notice, of which the one annexed is a true copy, was duly published in such newspaper once in each week for four successive weeks, commencing on the 28th
372 day of April, A. D. 1859, and ending on the 19th day of May, A. D. 1859.

L. L. CROUNSE.

Subscribed and affirmed to. this 21st day of May, A. D. 1859, before me.

CHAS. C. PAINE,
Notary Public, Milwaukee Co., Wisconsin.

(Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement 7, 8, 9, 10, 11, 12, 13," with these additions, namely: "The above sale is hereby postponed and adjourned to, and will be made on, Saturday, the twenty-third day of April, 1859, at twelve o'clock m. of that day, at the court-house, in the city of Milwaukee, in the State of Wisconsin.

"Dated Milwaukee, March 26th, 1859.

"WILLIAM BARNES, *Trustee.*")

"The above sale is hereby postponed and adjourned to, and will be made on, Saturday, the 21st day of May, 1859, at twelve o'clock m. of that day, at the court-house, in the city of Milwaukee, in the State of Wisconsin.

"Dated Milwaukee, April 23d, 1859.

"WILLIAM BARNES, *Trustee.*"

STATE OF NEW YORK,
City and County of New York, ss:

M. F. Gale, being duly sworn, saith that he is in the office of the "New York Times," a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly published in the said "New York Times" four times, once each week successively, commencing on the 24th day of February, 1859.

M. F. GALE.

Sworn to before me, this 25th day of May, 1859.

J. O. HARGER,
Commissioner of Deeds, &c., New York.
R. A. WATKINSON,
Comm'r for Wisconsin.

373 (Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement 7, 8, 9, 10, 11, 12, 13.")

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered, that on the 25th day of May, 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared F. M. Gale, to me personally known, and whose name is subscribed to the annexed affidavit, who, being duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof I have hereunto set my hand and affixed the seal of my office on the 25th day of May, in the year of our Lord 1859.

[SEAL.] R. A. WATKINSON,
Commissioner, &c., 20 Nassau St.

STATE OF NEW YORK,
City and County of New York, ss:

M. F. Gale, being duly sworn, saith that he is foreman in the office of the New York Times, a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly published in the said New York Times four times, once each week successively, commencing on the 31st day of March, 1859.

M. F. GALE.

Sworn to before me, this 25th day of May, 1859.

J. O. HARGER,
Commissioner of Deeds, &c., New York.
R. A. WATKINSON,
Com'r for Wisconsin.

374 (Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin, "Advertisement 7, 8, 9, 10, 11, 12, 13." with this addition, namely: The above sale is postponed to Saturday, April 23d, the same hour and place.

WILLIAM BARNES, *Trustee.*)

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered, that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin, to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared M. F. Gale, to me personally known, and whose name is subscribed to the annexed affidavit, who being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, on the 25th day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

[SEAL.] R. A. WATKINSON,
Commissioner, &c., 20 Nassau St.

STATE OF NEW YORK, *City and County of New York, ss:*

M. F. Gale, being duly sworn, saith that he is foreman in the office of the "New York Times," a newspaper printed in the city of New York, that the advertisement hereto annexed has been regularly published in the said New York Times four times, once each week successively, commencing on the 28th day of April, 1859.

M. F. GALE.

375 Sworn to before me, this 25th day of May, 1859,
J. O. HARGER,
Commissioner of Deeds, New York.
R. A. WATKINSON,
Commissioner for Wisconsin.

(Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement 7, 8, 9, 10, 11, 12, 13," with these additions, namely: The above sale is postponed to Saturday, April 23d., same hour and place.

WILLIAM BARNES, *Trustee.*)

Milwaukee, March 26th, 1859.

The above sale is further postponed to Saturday, May 21st., 1859, same hour and place.

WILLIAM BARNES, *Trustee.*

Milwaukee, April 23d, 1859.

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered, that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin, to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared M. F. Gale, to me personally known, and whose name is subscribed to the annexed affidavit, who being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

R. A. WATKINSON,
Commissioner, &c., 20 Nassau St.

376 STATE OF NEW YORK, *City and County of New York, ss:*

Thomas N. Rooker, being duly sworn, saith that he is the foreman in the office of the "New York Daily Tribune," a newspaper printed in the city of New York, that the advertisement hereto annexed has been regularly published in the said New York Daily Tribune once a week, five weeks successively, commencing on the twenty-fourth day of February, 1859.

THOMAS N. ROOKER.

Sworn to before me this 25th day of May, 1859.

R. A. WATKINSON,
Commissioner for Wisconsin.

(Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement 7, 8, 9, 10, 11, 12, 13.")

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered, that on the 25th. day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority, and under the laws of the State of Wisconsin, to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared Thomas N. Rooker, to me personally known, and whose name is subscribed to the annexed affidavit, who being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

R. A. WATKINSON,
Commissioner, &c., 20 Nassau St.

377 STATE OF NEW YORK, *City and County of New York, ss:*

Thomas N. Rooker, being duly sworn, saith that he is foreman in the office of the "New York Daily Tribune," a newspaper printed in the city of New York, that the advertisement hereto annexed has been regularly published in said New York Daily Tribune once a week, four weeks successively, commencing on the thirty-first day of March, 1859.

THOMAS N. ROOKER.

Sworn to before me this 25th day of May, 1859.

ROBERT H. STUBERGH,
Commissioner of Deeds, &c., New York.

R. A. WATKINSON,
Commissioner of Wisconsin.

(Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse and marked in the margin, "Advertisement 7, 8, 9, 10, 11, 12, 13,) with this addition, namely: The above sale is adjourned to the twenty-third day of April, A. D. 1859, at the same hour and place.

WILLIAM BARNES, *Trustee.*)

Dated Milwaukee, March 26th, 1859.

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered, that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, commissioned and qualified by the executive authority, and under the laws of the State of Wisconsin, to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared Thomas N. Rooker, to me personally known, and whose name is subscribed to the annexed affidavit, who being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

378 In testimony whereof I have hereunto set my hand and affixed the seal of my office, on the 25th day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

R. A. WATKINSON,
Commissioner, &c., 20 *Nassau Street.*

STATE OF NEW YORK, *City and County of New York, ss:*

Thomas N. Rooker, being duly sworn, saith that he is foreman in the office of the "New York Daily Tribune," a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly published in said New York Daily Tribune once a week, four weeks Thursday, successively, commencing on the 28th day of April, 1859.

THOMAS N. ROOKER.

Sworn to before me, this 27th day of May, 1859.

ROBERT A. STEBACH,
Commissioner of Deeds, &c.
R. A. WATKINSON,
Comm'r for Wisconsin.

(Here follows the same affidavit as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement 7, 8, 9, 10, 11, 12, 13, with these additions, namely: The above sale is adjourned to the 23d day of April, A. D. 1859, at the same hour and place.

WILLIAM BARNES, *Trustee.*

Dated Milwaukee, March 26th, 1859.

The above sale is further adjourned to the 11st day of May, A. D. 1859, at the same hour and place.

WILLIAM BARNES, *Trustee.*)

Dated Milwaukee, April 23d, 1859.

379 STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered, that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner, resident in said city, duly commissioned and qualified by the executive authority, and under the laws of the State of Wisconsin, to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared Thomas N. Rooker, to me personally known, and whose name is subscribed to the annexed affidavit, who, being by me duly sworn, made oath that he knew the contents of said affidavit and that it is true.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, on the 25th day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

R. A. WATKINS,
Commissioner, &c., 20 *Nassau street.*

380 *Barnes mortgage.—Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas, the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA.

No. ——. *State of Wisconsin.* $ ——.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof, in the sum of dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said

company to William Barnes, of the city of Albany, and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in progress of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its con-
381 tents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

———— ————, *President.*

———— ————, *Secretary.*

Registered and countersigned this , 185 .

———— ————, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are, or hereafter may be, or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute, or be a part of, or appertain to, said railroad. And also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now

built or made, or to be built or made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils and other personal property which have been or may hereafter be procured for or
382 used in connection with said railroad; and also all and singular the rights, liberties, and privileges and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin, subject, nevertheless, to lines already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company to the amount of about nine hundred and twenty-two thousand dollars; also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars; also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars; also subject to a mortgage of four million dollars upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part, and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed:

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be

made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases, it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of all and singular
383 the railroad and all the other property, real and personal, hereinbefore conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given.

And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor that said company will, from time to time during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to the said trustee all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed, or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall
384 also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will re-convey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, and expenses and compensation of the trustee in, about, or for the execution of the trust, and will in all things keep him fully identified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars; with such sum, as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds secured by this deed of trust, at the lowest price he can purchase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: *Provided*, such resignation, after reasonable notice to the president or secretary of said railroad

385 company, shall be approved by said supreme court. And on the death, removal or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee, and had executed this deed.

Eleventh. Said trustee hereby accepts, and covenants and agrees to and with said railroad company faithfully to execute, said trust.

In witness whereof said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse & Milwaukee Railroad Company—

[SEAL.] By N. P. STANTON, *President.*

LOCKWOOD L. DOTY,

Secretary of La Crosse & Milwaukee Railroad Company.

[SEAL.] WILLIAM BARNES, *Trustee.*

Signed, sealed, executed, and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee.

CLARK, B.
J. C. CARY.

Signed, executed, and delivered in our presence as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P.
386 Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above in-

strument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him as one of the parties thereto and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment, is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person
387 described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Rail-

road Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal.

[SEAL.]

E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

Exhibit No. 2.

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part:

Whereas the Congress of the United States, by an act approved June 3, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers for six sections in width on each side of said roads respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of
388 the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold, and which pre-emption has attached as aforesaid, together with the sections and parts

of sections designated by odd numbers as aforesaid, and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land, which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid and no other; and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say: that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed,

then another like quantity of land hereby granted may be
389 sold, and so from time to time until said roads are completed;

and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said road, under the direction of the Post Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law the Postmaster General shall have the power to determine the same.

Approved June 3, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11, 1856, which is in the following

words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, 1856," the people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads, with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise, and enjoy the same rights, privileges, functions, franchises, authority, and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built or to be built thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

390 SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connection with any and all other railroads which may cross, come up to, or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies, as last above mentioned, but all such companies shall be put upon the same equal terms: *And provided also*, That if

the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connection with the same, shall at any time not be able to agree upon the terms of such connections, then, and in that case, either party may apply to the circuit court of the circuit in which such connection may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connection shall exist, and the said award of terms of connection shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice, in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present and prospective, of this State, in or to any and all the lands granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress, entitled "An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads," approved June 3, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said lands shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever:

And provided further, That the title to said lands shall vest in
391 the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say: whenever twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed, so as to admit of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company, and so from time to time until said roads are completed, and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit running regular trains of cars on the same; and the governor of the State shall, in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this charter be en-

titled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on, from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall, from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress, hereinbefore mentioned, shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State re-
392 quired to pay in place of taxes upon its road now constructed or which it may hereafter construct, under the present charter, and in condition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road, to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company, and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company and to examine under oath the officers, agents, and employees of said company and other persons, and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter afore-

said, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company.

The first payment shall be made on the first day of March next after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made, and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village or other municipal authority in the State, (except special taxes for the improvement of streets and side walks,) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed held by said company, and necessary for the operation of said railroad; and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the
393 State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited quantities at fair prices, preference being given to actual settlers.

SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other watercraft on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build, and own such vessels, boats, barges, and other water craft as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of all their right, title, claim, or demand of, in, or to any lands, or interest in lands granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad, which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy, and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth, such payment to be made in money, bonds, stock, or lands, or in such other manner as said companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, 394 and in case they cannot agree upon such third person, the governor shall appoint such third person; and the three persons so selected shall constitute a board of commissioners, whose duty it shall be to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11. This act and all grants herein contained shall cease and be void, unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so appropriate, take, possess, hold, or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above

its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two millions of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary pro rata from each of the several subscriptions; and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

395 SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall, from time to time, operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of the last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state;

And whereas the said railroad company for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined, before the date of the indenture hereinafter mentioned, dated June 21, 1858, between said company of the first part, and said Barnes, as trustee, of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached;

And whereas, also, the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad mortgages, on pages

342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear;

And whereas also the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee
396 Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances;

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises therein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles, and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R. Co. by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands and real estate, which now constitute, or may hereafter constitute, or be a part of, or appertain to, said railroads, and including also all and singular the lots, lands, and real estate whatsoever, which

the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made, or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto; for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter.

397 And also all and singular the locomotive, engines, and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents, to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated, and duly conveyed and duly

patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above-described and granted premises, lands, tenements, and every part and parcel thereof; and also all the property, real, personal,
398 and mixed, now vested or required, or hereafter to be vested or acquired; and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises above conveyed, or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, estates, or corporations lawfully claiming or to claim the same, or any part thereof, subject nevertheless to all legal liens already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part and his successors, and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed, and also expressed in the said indenture, made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds or some of them, or in the payment of the interest thereon, or some part thereof, and the railroad company shall be suffered and permitted to hold and enjoy said railroad with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroads, and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profit thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to exe-

cute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the
399 estate, right, title, or interest, whether legal or equitable, of said trustee and said railroad company of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given.

And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor that said company will, from time to time during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to the said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist, or may hereafter arise, or be imposed upon the property hereby conveyed, or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trus-
400 tee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted, and agreed by the said railroad company that the provision herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions of omissions to act under this indenture, in the same manner as if all the provision thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse and Milwaukee Railroad Company—

[SEAL.] By N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
[SEAL.] WILLIAM BARNES, *Trustee.*

Signed, sealed, executed, and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president.

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed, and delivered in our presence as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence as to William Barnes, the said trustee.

JOHN C. WHITE.
ISAAC EDWARDS.

401 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me, personally appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instru-

ment. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. — Third street, in the city of Milwaukee, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me, personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

402 In testimony whereof I have hereunto set my hand and seal official, at my office No. — Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad

Company, the other party thereto; and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify the person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

403 Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN.

The respective parties hereby stipulate, at request of complainant, that the annexed and foregoing printed copies of documents may be read in evidence on the hearing of this cause, with the same effect and subject to the same objections as though their respective originals were produced, proven, and given in evidence before the examiner in this cause; and it is admitted that the persons who signed the within request to said Barnes to foreclose said mortgages were the holders of over one hundred thousand dollars of said bonds, secured by said mortgages, at the time they made said request; and that said original documents were all recorded at length in the office of the secretary of state for the State of Wisconsin, as they purport.

M. H. CARPENTER,
Sol. for Compl't.
EMMONS & VAN DYKE,
Sol's for Def't.

The Milwaukee and Minnesota company further read in evidence two stipulations, one preceding and the other following the printed record in the Cleveland case, also said printed record, as follows:

404 Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
SELAH CHAMBERLAIN

It is hereby stipulated by the respective parties to this cause that all the depositions and testimony which was taken in the cause some-